TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 11, 1958
CERTIORARI GRANTED OCTOBER 13, 1958

No. 15644

United States
Court of Appeals
for the Ninth Circuit

MARION S. FELTER, on behalf of himself and others similarly situated, Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation, BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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District Court of the United States, Northern District of California, Southern Division

No. 36348

MARION S. FELTER, on behalf of himself and others similarly situated, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes now the plaintiff, Marion S. Felter, on behalf of himself and others similarly situated, and alleges that:

I.

Plaintiff is a resident of Ashland, Oregon, and brings this action on behalf of himself and others similarly situated as a class action under Rule 23 of the Federal Rules of Civil Procedure.

II.

Plaintiff and others similarly situated now are and have at all times since October 24, 1955, been

employed as conductors or in other operating classifications by the Southern Pacific Company, a corporation.

III.

Defendant Southern Pacific Company is a corporation duly organized and existing under the laws of the State of Delaware, and duly authorized to and doing business in the States of California, Oregon, Arizona, Texas, New Mexico, Nevada and Utah, and as a common carrier by rail in interstate commerce. Defendant Southern Pacific Company, hereinafter referred to as Carrier, is a carrier within the definition of Section 1 of the Railway Labor Act, as amended, Title 45 U.S.C.A., Section 151 et seq. The Carrier has a principal place of doing business in the City and County of San Francisco, State of California.

IV.

Defendant Brotherhood of Railroad Trainmen, hereinafter referred to as the Brotherhood, is a voluntary association and a labor organization within the meaning of the Railway Labor Act, as amended, Title 45 U.S.C.A., Section 151 et seq., and has had at all times herein mentioned a collective bargaining agreement with the Carrier. The defendant Brotherhood, acting through its designated agent and component, the defendant General Committee, Brotherhood of Railroad Trainmen, maintains its headquarters and is a resident of the City and County of San Francisco, State of California.

V.

Defendant J. J. Corcoran, a resident of the State of California, is the General Chairman of the General Committee, Brotherhood of Railroad Trainmen, a defendant herein, and is sued in his representative capacity for said organization and its members.

VI.

Defendant J. E. Teague, a resident of the State of California, is Secretary of the General Committee, Brotherhood of Railroad Trainmen, a defendant herein, and is sued in his representative capacity for said organization and its members.

VII.

This Court has jurisdiction over the subject matter of this action and the parties hereto, because this is a suit arising under the law of the United States regulating commerce, the Railway Labor Act, Title 45 U.S.C.A., Section 151 et seq., and particularly Title 1, Section 11 of said Act, as hereinafter more particularly appears. The amount involved in this controversy exceeds the sum of $3,000, exclusive of interest and costs. The plaintiff is a resident of the State of Oregon and the defendant Southern Pacific Company is a Delaware corporation doing business in the State of California, and the defendant Brotherhood is a voluntary association doing business in the State of California.

VIII.

This action involves and requires a determination of the validity of a collective bargaining agreement

negotiated under the provisions of the Railway Labor Act between the Carrier and the Brotherhood, as interpreted and applied by the parties thereto. This suit, therefore, arises under a law of the United States regulating commerce, the Railway Labor Act.

IX.

The plaintiff and others similarly situated on or some time before February 1, 1956, executed an assignment of wages which provided that the Carrier should deduct from the wages or salaries due plaintiff and others similarly situated such amounts as would be required to pay the dues, assessments, initiation fees and insurance premiums owed by them to the Brotherhood. At the time said assignments were executed, plaintiffs and others similarly situated were members of the Brotherhood. Said assignments were made pursuant to a collective bargaining agreement between the Carrier and the Brotherhood, which provided that the Carrier would deduct sums for periodic dues, initiation fees, assessments and insurance premiums payable to the Brotherhood by the members thereof.

X.

The agreement hereinabove referred to further provided that the members of the Brotherhood who were employees of the Carrier and who had signed such authorizations for wage assignments could at any time after the expiration of one year from the date of the execution of such assignment revoke the authorization in writing; the Brotherhood, un-

der the terms of said agreement, being required to provide the Carrier with the names of those employee members who had executed such assignments, said names to be produced monthly.

XI.

On or before March 1, 1956, the plaintiff and others similarly situated terminated their membership in the Brotherhood. On or before March 1, 1956, the plaintiff and others similarly situated sent a written revocation of their assignment of wages for the payment of dues to the Brotherhood to the defendant Carrier and to the defendant Brotherhood.

XII.

The defendant Carrier has advised plaintiff and others similarly situated that it will not honor such written revocations, due receipt of same having been acknowledged, but that the defendant Carrier would continue to deduct from the wages of plaintiff and others similarly situated and pay to the defendant Brotherhood such sums as the Brotherhood indicated would be required to pay periodic dues, initiation fees and assessments owed by and charged against plaintiff and others similarly situated, even though they were no longer members of the Brotherhood.

XIII.

The defendant Brotherhood has advised the plaintiff and others similarly situated that it will not honor their notices of termination of membership in the Brotherhood, nor forward to the Car-

rier the revocation of assignments received by it from the plaintiff and others similarly situated. The Brotherhood has announced that it will continue to collect sums from the wages due plaintiff and others similarly situated withheld by the Carrier for and on account of dues, initiation fees and assessments claimed by the Brotherhood.

XIV.

The defendant Carrier has announced that it will continue to withhold from the wages due plaintiff and others similarly situated certain sums and pay them to the defendant Brotherhood each month, and the defendant Brotherhood will claim such sums and receive such sums each month. Therefore, a multiplicity of suits will arise in this controversy unless the Carrier is enjoined from deducting such sums from the wages due plaintiff and others similarly situated and pay same to the defendant Brotherhood. A multiplicity of actions will arise out of this controversy unless the Brotherhood is restrained and enjoined from claiming and receiving such sums from the Carrier each month.

XV.

The plaintiff and others similarly situated do not have adequate remedy at law by reason of the refusal of the defendants Carrier and Brotherhood to recognize the plaintiff's and others similarly situated withdrawal from the Brotherhood as their representative for collective bargaining purposes and continued refusal to honor the revocation of

the assignment of wages to the Brotherhood, of which they are no longer members.

Wherefore, plaintiff and others similarly situated pray that this Court:

(1) Make a determination of the rights of plaintiff and others similarly situated to withdraw from the Brotherhood and revoke the assignment of wages in favor of the Brotherhood, as provided in the Railway Labor Act, Title 45 U.S.C.A., Section 151 et seq., and the rights and responsibilities of the defendant Brotherhood under the collective bargaining agreement hereinabove referred to, which was negotiated by the Brotherhood as the collective bargaining agent of plaintiff and others similarly situated.

(2) Issue an order to show cause directed to the Carrier requiring it to appear and show cause why it should not be permanently enjoined from deducting a portion of plaintiff's and others similarly situated wages and paying same to the Brotherhood, and that the Court issue an order to show cause directed to the Brotherhood requiring it to appear and show cause why it should not be enjoined from claiming and receiving any portion of the wages due plaintiff and others similarly situated.

(3) Pending the hearing on the order to show cause, the Court issue a temporary restraining order directed to the Carrier and the Brotherhood in the manner set forth in Paragraph (2) above.

(4) Following the hearing on the order to show

cause, the Court issue a temporary injunction against the Brotherhood and the Carrier in the manner set forth in Paragraph (2) above, pending the determination of the litigation of this action.

(5) Following the litigation of this action, the Court issue its permanent injunction against the Brotherhood and the Carrier in the manner set forth in Paragraph (2) above.

(6) Such other and further relief as the Court may deem proper in the premises.

CARROLL, DAVIS & BURDICK,
/s/ By RICHARD B. McDONOUGH,
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF RICHARD B. McDONOUGH IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

State of California
City and County of San Francisco—ss.

Richard B. McDonough, being first duly sworn, deposes and says that:

He is an attorney at law and one of the attorneys for the plaintiff in the above entitled action; said plaintiff is a resident of the State of Oregon and

resides out of the City and County of San Francisco, where said attorney has his office; affiant is apprised of all the circumstances and facts of plaintiff's suit and makes this affidavit on his behalf.

At all times involved in this action the plaintiff has been employed as a conductor by the Southern Pacific Company, a corporation. On or before February 1, 1956, while so employed as a conductor, the plaintiff executed an assignment of wages due him from the defendant Southern Pacific Company each month in favor of the defendant Brotherhood of Railroad Trainmen, to the extent that said defendant Brotherhood would claim amounts due to it by plaintiff for dues, assessments and insurance premiums arising in connection with plaintiff's membership in the Brotherhood. Said assignment was made in the form and in the manner provided in a collective bargaining agreement negotiated by the defendant Southern Pacific Company and the Brotherhood of Railroad Trainmen, a voluntary association, acting as collective bargaining agent for the plaintiff on or about August 8, 1955.

Pursuant to the provisions of Section 11 of the Railway Labor Act, Title 45 U.S.C.A., Section 150 et seq., and pursuant to the provisions of said collective bargaining agreement, on March 1, 1957, the plaintiff executed a revocation of the assignment of wages hereinabove described, and delivered said revocation to the defendant Southern Pacific Company and to the defendant Brotherhood of Railroad Trainmen.

The plaintiff was advised by defendant Southern Pacific Company that said revocation would not be recognized by the Company and that it would continue to deduct from the plaintiff's wages each month such sums as would be claimed by the defendant Brotherhood of Railroad Trainmen for the payment of assessments and dues arising out of plaintiff's membership in the Brotherhood. The plaintiff, prior to serving such revocation of assignment upon the defendant Southern Pacific Company, terminated his membership with the aforesaid Brotherhood of Railroad Trainmen, and further served upon that organization a notice of revocation of his assignment of wages in favor of the Brotherhood of Railroad Trainmen. Defendant Brotherhood of Railroad Trainmen refuses to recognize the plaintiff's termination of membership in said Brotherhood and further refuses to honor the revocation of the assignment of wages, and continues to claim and will receive all sums which are withheld from the plaintiff's wages and paid to him by the Southern Pacific Company.

Plaintiff brings this action on behalf of himself and other employees similarly situated as conductors or operating personnel employed by the defendant Southern Pacific Company, who, along with plaintiff, have terminated their membership in the Brotherhood of Railroad Trainmen and have served revocation of assignment of wages on the defendant Brotherhood of Railroad Trainmen and upon the defendant Southern Pacific Company.

The defendant Brotherhood of Railroad Train-

men refuses to recognize the termination of membership and still professes to act as the collective bargaining agent of plaintiff and others similarly situated. The Brotherhood of Railroad Trainmen refuses to recognize the revocation of assignment and continues to claim sums withheld from the plaintiff's wages and the wages of others similarly situated by the Southern Pacific Company. The Southern Pacific Company refuses to recognize the termination of memberships by plaintiff and others similarly situated, and the Southern Pacific Company continues to recognize the Brotherhood of Railroad Trainmen as the collective bargaining agent for this plaintiff and others similarly situated. The Southern Pacific Company has withheld sums from the wages due plaintiff and paid same to the defendant Brotherhood of Railroad Trainmen, and has withheld sums from the wages due others similarly situated and paid same to the defendant Brotherhood of Railroad Trainmen.

The defendants will continue in such conduct above described unless ordered to refrain from doing so by this court. A multiplicity of suits will arise as a result of the continued refusal of the defendants to recognize the plaintiff's, and others similarly situated, termination of membership in the Brotherhood of Railroad Trainmen and revocation of assignment of wages in favor of the Brotherhood of Railroad Trainmen.

The acts of the defendants are in violation of Section 11 of the Railway Labor Act, and if said actions are in pursuance of any collective bargain-

ing agreement between the defendants, such collective bargaining agreement is likewise violative of Section 11 of the Railway Labor Act.

That the other persons similarly situated to plaintiff herein number in excess of fifty; that as to each of said persons similarly situated, the conduct of defendants as above described has been identical.

Wherefore, plaintiff prays for the equitable relief of this Court, pending a declaration of the respective rights of the parties under Section 11 of the Railway Labor Act, and/or any collective bargaining agreement involved herein.

/s/ RICHARD B. McDONOUGH.

Subscribed and sworn to before me this 12th day of April, 1957.

[Seal] GEORGETTE LINDEY,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Memorandum of Points and Authorities

Section 11, Railway Labor Act, 45 U.S.C.A., Sec. 151.

Salyant vs. Louisville & N. R. Co., 83 Fed. Supp. 391.

Smith vs. Baltimore & Ohio R. et al., 144 Fed. Supp. 869.

Rules of Civil Procedure, Rule 65.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon reading and filing the verified complaint of plaintiff in this action and the affidavit of Richard B. McDonough, and considering the Points and Authorities, and it appearing to the satisfaction of the Court therefrom that this is a proper case for granting a temporary restraining order, and unless the temporary restraining order prayed for in said complaint be granted, great injury will result to the plaintiff and others similarly situated before the matter can be heard on notice,

Now, Therefore, It Is Hereby Ordered that the defendants above named be and appear before the Master Calendar thereof, at the hour of 11 o'clock a.m. on the 18th day of April, 1957, then and there to show cause, if any they have, why they and their agents, servants, employees and attorneys should not be enjoined and restrained during the pendency of this action from the defendant Southern Pacific Company, a corporation, deducting from the wages due plaintiff and others similarly situated sums and paying same to the defendant Brotherhood of Railroad Trainmen, and continuing to recognize the Brotherhood of Railroad Trainmen as the collective bargaining agent for the plaintiff and others similary situated; and that the defendant Brotherhood of Railroad Trainmen be restrained from claiming or receiving any sums deducted from the wages of the plaintiff or others

similarly situated by the defendant Southern Pacific Company, and professing to act as the collective bargaining agent for plaintiff and others similarly situated.

It Is Further Ordered that pending the hearing of this order to show cause, the defendants, their agents, servants, employees and attorneys be, and they are hereby enjoined and restrained from, in the case of the defendant Southern Pacific Company, withholding any sums from the wages due said plaintiff and others similarly situated and paying same to the defendant Brotherhood of Railroad Trainmen, and recognizing the Brotherhood of Railroad Trainmen as the collective bargaining agent of said plaintiff and others similarly situated; and, in the case of defendant Brotherhood of Railroad Trainmen, from claiming or receiving any sums deducted from the wages due plaintiff and others similarly situated from defendant Southern Pacific Company and professing to act as the collective bargaining agent of said plaintiff and others similarly situated.

It Is Further Ordered that a copy of the complaint, a copy of the affidavit of Richard B. McDonough and the memorandum of points and authorities, if they have not already been served, be served upon the defendants no later than the 13th day of April, 1957.

Dated April 12, 1957.

/s/ EDWARD P. MURPHY,
Judge.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

State of California
City and County of San Francisco—ss.

Richard B. McDonough, being first duly sworn, deposes and says that:

He is one of the attorneys for Marion S. Felter, plaintiff in the above entitled action. Said plaintiff is a resident of Ashland, Oregon, and resides outside the City and County of San Francisco, where affiant maintains his offices, and, therefore, affiant makes this affidavit on behalf of said plaintiff.

On or about March 30, 1957, plaintiff submitted a letter of withdrawal from the Brotherhood of Railroad Trainmen and a revocation of the wage assignment made prior to March 1, 1956, in favor of the Brotherhood of Railroad Trainmen. Attached hereto and marked Exhibit A is a copy of said letter.

On or before March 30, 1957, plaintiff forwarded to the Southern Pacific Company a revocation of the wage assignment authorization which he had previously made in favor of the Brotherhood of Railroad Trainmen on or before March 1, 1956. Attached hereto and marked Exhibit B is a copy of the said revocation forwarded to the Southern Pacific Company.

On or before March 30, 1957, M. G. Breuner,

Local Chairman of the Order of Railroad Conductors, on behalf of plaintiff and others similarly situated forwarded to the defendant Southern Pacific Company, attention Mr. L. R. Smith, Superintendent, Portland Division, a revocation of the assignment of wages executed by plaintiff and others similarly situated on or before March 1, 1956, in favor of the Brotherhood of Railroad Trainmen. Said letter sets forth a portion of the people who are similarly situated to plaintiff in the controversy which gives rise to this lawsuit. A copy of said letter is attached hereto and marked Exhibit C.

On or about April 1, 1957, the defendant Southern Pacific Company, by L. R. Smith, Superintendent, forwarded a certified letter to Mr. M. G. Breuner, Local Chairman of the Order of Railroad Conductors, acknowledging receipt of the letter described in the above paragraph. Attached hereto and marked Exhibit D is a copy of said letter from L. R. Smith to M. G. Breuner.

Attached hereto and marked Exhibit E is a list of a portion of the individuals who are similarly situated to plaintiff in this controversy, in that said individuals have at some time prior to March 1, 1956, executed wage assignment authorizations in favor of the defendant Brotherhood of Railroad Trainmen for wages due them from the Southern Pacific Company, said assignments to cover monthly union dues, fees, assessments and initiation fees; and said individuals on or before March 30, 1957, terminated their membership in the defendant

Brotherhood of Railroad Trainmen and forwarded revocations of the wage assignments above referred to to the defendant Southern Pacific Company and to the defendant Brotherhood of Railroad Trainmen. As in the case of plaintiff Marion S. Felter, the defendant Southern Pacific Company refuses to recognize said revocations of wage assignments and, as in the case of plaintiff, the defendant Brotherhood of Railroad Trainmen refuses to recognize said individuals' termination of membership in the Brotherhood and refuses to recognize the revocations of the wage assignments in favor of the Brotherhood. As in the case of plaintiff, the defendant Brotherhood of Railroad Trainmen continues to profess to be the collective bargaining agent of such individuals.

/s/ RICHARD B. McDONOUGH.

Subscribed and sworn to before me this 16th day of April, 1957.

[Seal] GEORGETTE LINDEY,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

[Note: Exhibit A, Letter of March 30, 1957, Marion S. Felter to J. W. Beardsley, is set out at pages 23-24 of this printed record. Exhibit B, Wage Assignment Revocation, is set out at pages 79-80.]

EXHIBIT "C"
Order of Railroad Conductors
Division Number 526
Southern Pacific Lines
Eugene, Oregon
March 30, 1957

Mr. L. R. Smith, Superintendent
Portland Division—Southern Pacific Company
Portland, Oregon

Dear Sir:

Herewith properly signed Dues Deduction Revocation forms. These forms have been signed by employes working in the class and craft of conductors-brakemen, who had previously signed Wage Deduction Authorizations for the dues to be paid to the Brotherhood of Railroad Trainmen.

While this Revocation of Dues Deduction form has also been forwarded to the proper Treasurer of the Brotherhood of Railroad Trainmen, it is our understanding that he is declining to submit same to you for the purpose of it being made effective.

So that the employee whose signature appears on the enclosed forms may, under the circumstances, be sure that the Carrier has received such revocation, he has personally requested that I transmit these forms to you.

Will you kindly place in effect the Revocation of the Dues Deduction for the men herewith listed, for whom proper cards are enclosed.

The men involved are:

H. C. Barker, H. E. Counts, E. H. Stankey, A.

E. Ebbensen, C. N. Speight, L. A. West, H. R. Robinson, H. E. Harmon, J. G. DePaepe, N. C. Cannon, Marion S. Feltner, J. D. Dunn, Charles Vincent.

Respectfully yours,

M. G. BREUNER.

cc: H. F. Brown
G. A. Falk
G. L. Johnson

EXHIBIT "D"

Southern Pacific Company
Union Station
Portland 9, Oregon
April 1, 1957

In reply please refer to 013-234.
Certified U. S. Mail
Return Receipt Requested

Mr. M. G. Breuner
Local Chairman ORC&B
100 Gilham Road, Eugene, Oregon

Dear Sir:

Your letter of March 30, 1957 without file reading:

[See Exhibit "C" set out at pages 20-21.]

This matter is being directed to the attention of the appropriate officer of the Brotherhood of Railroad Trainmen for handling in accordance with the Agreement.

Yours truly,

/s/ L. R. SMITH.

EXHIBIT "E"

Individuals Similarly Situated to Plaintiff

James E. Smith, Eugene, Oregon, Glenn H. Ross, Eugene Oregon, Clarence W. Everts, Sr., Eugene, Oregon, Harold C. Barker, Eugene, Oregon, Julius G. DePaepe, Springfield, Oregon, Charles N. Speight, Springfield, Oregon, William V. Ficek, Eugene, Oregon, Harvey E. Harmon, Springfield, Oregon, James D. Dunn, Eugene, Oregon, James L. Graham, Eugene, Oregon, Fred A. Copeland, Eugene, Oregon, Jacob L. Ploub, Jr., Eugene, Oregon, Willis E. Haight, Eugene, Oregon, Hawley E. Counts, Roseburg, Oregon, Lawrence A. West, Roseburg, Oregon, Robert V. Miller, Roseburg, Oregon, Robert E. Biddle, Ashland, Oregon, Norman C. Cannon, Ashland, Oregon, Donald T. Skundrick, Ashland, Oregon, Walter M. Skundrick, Ashland, Oregon, Thomas A. Henderson, Springfield, Oregon, Edward H. Stankey, Eugene, Oregon, A. E. Ebbesen, Eugene Oregon, William M. Jones, Eugene, Oregon.

[Endorsed]: Filed April 16, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF J. W. BEARDSLEY

State of California
City and County of San Francisco—ss.

J. W. Beardsley, being first duly sworn, deposes and says that:

I am the Secretary and Treasurer of Lodge No. 314 at Eugene, Oregon, Brotherhood of Railroad Trainmen, and have been the one who has dealt with the Plaintiff, Marion S. Felter, in connection with the dues deduction matters affecting the Organization.

First word which I received from Mr. Felter in this connection was a letter which read as follows:

"321 Alta
Ashland, Oregon
March 30, 1957

Mr. J. W. Beardsley
2334 Friendly, Eugene, Oregon

Dear Sir and Brother:

With some feeling of regret I wish to advise that I have decided to withdraw from the BofRT and join the ORC&B. I have no dissatisfaction with Local 314 or any of its members or officers but for various reasons have decided to become a member of the ORC&B.

Effective April 1, 1957, I hereby revoke the Wage Assignment Authorization now in effect assigning to the Brotherhood of Railroad Trainmen that part

of my wages necessary to pay my monthly dues, assessments, initiation fees and insurance premiums, now being withheld pursuant to the Deduction Agreement between the Organization and the Company. I hereby cancel said authorization to deduct any such monthly dues. I have sent an attachment "B" card to the company.

I trust this will suffice to take care of the matter and if there should be any further question please advise.

Fraternally yours,

(Sgd.) Marion S. Felter."

This letter was received by me on April 2, 1957, and was postmarked March 31, 1957, 11:30 AM, Ashland, Oregon, which is a distance of approximately 214 miles by rail from Eugene, Oregon, where I am located. There was no revocation form attached to this letter of March 30, 1957, and I had received no previous advice from anyone of any action taken by Mr. Felter to revoke his assignment of wages. In the meantime and on March 30, 1957, the Secretary and Treasurer of the Order of Railway Conductors and Brakeman, gave me a wage assignment revocation in the prescribed form, but one that was printed by the Order of Railway Conductors and Brakemen and not "reproduced and furnished as necessary" by the Brotherhood of Railroad Trainmen.

Following the receipt of this letter of March 30, 1957, from Mr. Felter, having in mind our agree-

ment with the railroad and my instructions from the Brotherhood of Railroad Trainmen pursuant to this agreement that I had "full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company", I wrote Mr. Felter as follows:

"April 2, 1957

Marion S. Felter
321 Alta, Ashland, Oregon

Dear Sir and Brother:

This is in reply to your letter of March 30, which arrived yesterday afternoon.

General Chairman Corcoran has instructed all secretary-treasurers that the A-2 Wage Assignment Revocation cards printed by the ORC&B are not acceptable. The only way that you can be released from Wage Assignment Authorization is by signing a regulation A-2 card furnished by me and forwarded by me to the Company. I am enclosing a card for you to complete and return to me.

Since I mail my Wage Assignment papers to the Company tomorrow morning, your card will have to be sent in as effective May 1.

We would be sorry to lose you as a member of the BRT and hope that you may reconsider.

Fraternally yours,

(Sgd.) J. W. Beardsley,
Secretary-treasurer #314."

The card which I sent to Mr. Felter in my letter of April 2, 1957, was never filled out or completed

and returned to me as I requested him to do. As soon as it would have been filled out and returned to me in accordance with my instructions from the Brotherhood of Railroad Trainmen, and in accordance with our practice in handling these lodge matters under the agreement, I would have promptly processed the card giving the revocation effect in accordance with Section 3 of the Dues Deduction Agreement, and in accordance with the time schedule worked out with the Company thereunder.

So far as any others are concerned similarly situated with Mr. Felter, I have plenty of revocation cards available in the form prescribed by our agreement, and was at all times ready and willing as Secretary and Treasurer of the Brotherhood of Railroad Trainmen to furnish these forms on request and "assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company".

Since I have the responsibility as the representative of the organization for the handling of these matters, I did not feel that it would be proper to allow some representative of some other organization, or other outsider, to handle the matters, or for them to be handled, differently than that spelled out and set forth in our Dues Deduction Agreement with the railroad. I then wrote to J. J. Corcoran, General Chairman, Brotherhood of Railroad Trainmen, as follows:

"April 3, 1957

J. J. Corcoran
General Chairman BRT
939 Pacific Building
San Francisco 3, California

Dear Sir and Brother:

Enclosed is copy of a letter than I have today received from Mr. L. R. Smith. Attached to his letter were 13 of the A-2 cards that had been printed by the ORC&B.

My check-off list had already been mailed when I received Mr. Smith's letter. I included with my list regulation A-2 cards for the following: Harold C. Barker, Norman C. Cannon, Julius G. DePaepe, James D. Dunn, Thomas N. Haldorson, and James E. Smith.

A regulation A-2 card for Hawley Counts arrived after my check-off list had been mailed, and will be sent in with next month's list together with any other regulation A-2 cards received before May 3. ORC&B local secretary-treasurer, George Johnson, agrees with me that any BRT A-2 cards which arrive since my April list has been mailed, shall be held until next month.

Since Mr. Smith apparently assumes that we would accept the A-2 cards which he returned to me (these cards were sent to him by Mr. Breuner, I believe), Brother Borgaard and I thought that you might prefer to answer Mr. Smith's letter, or might want to advise me as to how it should be answered.

Of the thirteen listed by Mr. Smith, 6 have not requested regulation cards from me, 2 have requested them, but have not returned them, and 5 have requested and returned them.

Fraternally yours,

(Sgd.) J. W. Beardsley
Secretary-treasurer #314"

Thereupon I received following letter from L. R. Smith, Superintendent, Southern Pacific Company:

"April 1, 1957

In reply please refer to 013-234
Certified U. S. Mail
Return Receipt Requested
Mr. J. W. Beardsley, Treasurer
McKenzie Lodge #314, BofRT
2334 Friendly Street, Eugene, Oregon
Dear Sir:

I am enclosing herewith Wage Assignment Revocations which have been presented in favor of the following:

Harold C. Barker	Harvey E. Harmon
Norman C. Cannon	Harlan R. Robinson
Hawley E. Counts	Charles N. Speight
Julius G. DePaepe	E. H. Stankey
James D. Dunn	Charles Vincent
Anders E. Ebbesen	Lawrence A. West
Marion S. Felter	

The attached Wage Assignment Revocations are being forwarded to you so that they may be handled in accordance with provisions of the Agreement signed at San Francisco, California, June 23,

1956, identified as TRN 1-685, as you will undoubtedly wish to show same on the list to be furnished on or before the 5th day of April, 1957 as the names of the employes from whose wages no further deductions are to be made. Please advise.

Yours truly,

(Sgd.) L. R. Smith."

I replied as follows under date of April 8, 1957:

"Mr. L. R. Smith
Superintendent—Portland Division
Southern Pacific Company
Portland, Oregon

Dear Sir:

This will acknowledge receipt of your letter of April 1, 1957, reading:

"I am enclosing herewith Wage Assignment Revocations which have been presented in favor of the following:

Harold Barker	Harvey E. Harmon
Norman C. Cannon	Harlan R. Robinson
Hawley E. Counts	Charles N. Speight
Julius G. DePaepe	E. H. Stankey
James D. Dunn	Charles Vincent
Anders E. Ebbesen	Lawrence A. West
Marion S. Felter	

"The attached Wage Assignment Revocations are being forwarded to you so that they may be handled in accordance with provisions of the Agreement signed at San Francisco, California, June 23, 1956, identified as TRN 1-685, as you will un-

doubtedly wish to show same on the list to be furnished on or before the 5th day of April, 1957, as the names of the employes from whose wages no further deductions are to be made. Please advise."

The wage assignment revocation cards (Form A-2) which you have forwarded to me are spurious cards which have been printed by representatives of the Conductors' Organization.

Section 1(c) of the Dues Deduction Agreement (TRN 1-685) effective August 1, 1955, provides:

> "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company."

Since, under the rule, it is the sole responsibility of the Brotherhood of Railroad Trainmen to reproduce, procure, execute and deliver all revocation cards concerning wage assignments in favor of the Brotherhood, we do not recognize any revocation cards except those reproduced by our organization.

Employees desiring to execute wage assignment revocation cards (Form A-2), may procure them from the undersigned in person, or by a request in writing over their signature.

I am returning the cards herewith and you may advise the Conductors' Organization accordingly.

For your information we have executed bona fide revocation cards for the following:

Harold C. Barker	Effective April 1, 1957
Norman C. Cannon	" " " "
Julius G. DePaepe	" " " "
James D. Dunn	" " " "
Thomas N. Haldorson	" " " "
James E. Smith	" " " "
Hawley E. Counts	Effective May 1, 1957
Robert W. Kinkade	" " " "

Yours truly,

(Sgd.) J. W. Beardsley
Secretary-treasurer #314"

At all times in accordance with our agreement with the railroad; we had authorization forms for revocation "reproduced and furnished as necessary by the Organization", and all any member has ever had to do, or would have to do now, would be to advise me that he wants a revocation card and the date for it to become effective, and he would get his card and then the matter would be handled with the Company in accordance with our Dues Deduction Agreement.

If Mr. Felter and others who are allegedly similarly situated are being caused to suffer any inconvenience, it is of their own making and is a result of their own actions. Prompt relief could have been furnished by following the procedure set forth in the governing agreement. In this connection authorization for revocation of dues deductions would be furnished on the properly prescribed form, either by oral or written request.

At all times I have had in mind and followed the

following language from our Dues Deduction Agreement with the Southern Pacific Company:

"Revocation of the authorization shall be in the form agreed upon by the parties, copy of which is attachment 'B' and made a part hereof.

(c.) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.

3. Deductions as provided for herein will be made monthly by the Company from wages due employes for the first period in each calendar month, and the Company will, subject to the provisions of paragraph 4 hereof, remit to the Organization, the total amount of such deductions, less sums withheld in accordance with paragraph 5, on or before the 15th day of the month following the month in which such deductions are made. With such remittance the Company will furnish to the Treasurer of the Local Lodge a statement showing employes from whom deductions were made and amount of deductions."

Every member is furnished a copy of the above Agreement and is explained to him when he first signs the authorization for dues deduction.

The authorization card itself which every member signs authorizing the dues deduction is a part of the contract, and contains the following language:

"* * * as provided under the Deduction Agreement entered into by and between the Organization and the Company; * * *"

/s/ J. W. BEARDSLEY.

Subscribed and sworn to before me this 19th day of April, 1957.

[Seal] /s/ DOROTHY J. MOJICA,
Notary Public in and for the County of San Francisco, State of California. My commission expires May 13, 1957.

Placed among the papers in the case but never filed.

[Title of District Court and Cause.]

AFFIDAVIT OF J. W. BEARDSLEY IN OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

State of California
City and County of San Francisco—ss.

J. W. Beardsley, being duly sworn, deposes and says that:

Willis E. Haight, who is mentioned in the complaint on the file herein as one of the plaintiffs similarly situated to Marion S. Felter is a member of the Brotherhood of Railroad Trainmen holding insurance in the organization which insurance is affected by the Dues Deduction Agreement as follows:

The premiums on the Brotherhood Life Insurance carried by Mr. Haight are paid concurrently with, and as a part of, his monthly dues and assessments. The continued status of this insurance is contingent upon his membership in the Brotherhood of Railroad Trainmen. If the restraining order is continued in effect it would naturally withhold from the Brotherhood premiums on the life insurance in effect in behalf of Mr. Haight as well as organization dues and assessments. Such withholding of insurance premium monies will jeopardize, and may even serve to cancel this insurance. Affiant has recently been told by said W. E. Haight that Haight desires to keep this insurance and his membership in the Brotherhood of Railroad Trainmen and affiant, at the moment, is utterly confused as to how he could handle Mr. Haight's interests if the restraining order is continued without substituting some other procedure for the orderly procedure already set forth in the existing contractual arrangement with the railroad.

/s/ J. W. BEARDSLEY.

Subscribed and sworn to before me this 19th day of April, 1957.

[Seal] /s/ DOROTHY J. MOJICA,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires May 13, 1957.

Placed among the papers in the case but never filed.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Come now defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, and for answer to the complaint filed herein, state the following:

I.

Said defendants above named admit the allegations in Paragraphs I to VI, inclusive, except as hereinafter denied in connection with the claim of Marion S. Felter to represent others similarly situated.

II.

In answer to paragraph VII of the complaint, defendants admit that this suit is brought in connection with the Railway Labor Act Title 45, USCA Sec. 151, et seq., but deny that this court has jurisdiction over the subject matter, and that the case essentially involves the question of interpretation of the contract which is under the jurisdiction of the National Railroad Adjustment Board rather than the United States District Court.

III.

Defendants admit the allegations in paragraphs VIII, IX, and X of said complaint.

IV.

With regard to the allegations in paragraph XI of said complaint defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, admit these allegations but allege that the so-called written revocation is not handled through the designated secretary and treasurer of the Brotherhood of Railroad Trainmen and did not comply with the Dues Deduction Agreement in this connection.

V.

Defendants hereinbefore mentioned admit the allegations in paragraph XII, but allege that the carrier and Brotherhood are insisting that the arrangements made in the contract with notification through the secretary and treasurer be followed in order for the dues deduction and revocations to become effective.

VI.

Defendant Brotherhood and its officers admit the allegations in paragraphs XIII and XIV of the complaint, but allege that they are, in this connection, merely insisting that the Dues Deduction Agreement be followed, and they are simply relying on the language and meaning of that agreement.

VII.

In view of the apparent lack of dispute as to

the factual situation and the Dues Deduction Agreement in question, defendant Brotherhood and its officers allege that this is a proper case for the court to render a declaratory judgment with reference to the effect of the agreement herein involved, and therefore, deny the allegations in paragraph XV of the said complaint.

Wherefore, defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, pray for a summary judgment that said Dues Deduction Agreement is wholly valid and enforceable and in accordance with the Railway Labor Act, Section 211 (b), and that this action should, therefore, be dismissed both on the ground that the defendants are complying with the terms of said Dues Deduction Agreement, and on the further ground that any interpretation of said Dues Deduction Agreement would be under the jurisdiction of the National Railroad Adjustment Board and not of this court; and for such other relief as may be meet in the premises.

HILDEBRAND, BILLS & McLEOD,
/s/ By CLIFTON HILDEBRAND,
Attorneys for defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and

J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

Duly Verified.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF CLIFTON HILDEBRAND

State of California

County of Alameda—ss.

Clifton Hildebrand, being duly sworn, deposes and says:

That he is one of the attorneys for defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

That he has read the affidavit of Richard B. McDonough on file herein in connection with the affidavit in support of temporary restraining order, and particularly, that he has read Exhibit "E" attached to said affidavit, which purports to be a list of a portion of the individuals who are similarly situated to plaintiff in this controversy. Among those thus listed as supposedly being individuals similarly situated to plaintiff are the following:

Glenn H. Ross	Ross V. Miller
Thomas A. Henderson	Joseph J. Pleub, Jr.
Willis E. Haight	James E. Smith
Harvey E. Harmon	Harold C. Barker
Charles N. Speight	Clarence W. Everts, Sr.
Fed A. Copeland	

There are attached hereto copies of statements signed in their own handwriting by the above mentioned persons repudiating this alleged class action and, in most instances, expressing the desire to remain in the Brotherhood of Railroad Trainmen. The witnesses to these statements, M. E. Borgaard and J. W. Beardsley, will be present at the hearing of the motion for summry judgment or to dismiss, so that their testimony may be heard, if the court so desires.

/s/ CLIFTON HILDEBRAND.

Sworn to and subscribed before me this 29th day of April, A.D. 1957.

[Seal] /s/ CAROLYN STYLER,
Notary Public in and for the State of California,
County of Alameda.

(Copy) Eugene, Oregon
April 23, 1957

I Glenn H. Ross did in no way give to the Order of Railway Conductors and Brakeman or to the plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

And wish to remain in Brotherhood of Railroad Trainmen in good standing.

Glenn H. Ross,
Conductor,
Eugene, Oregon

Witness: J. W. Beardsley.
Witness: M. E. Borgaard.

(Copy) Rsbg. Ore.
April 23-57

I R. V. Miller did in no way give to the Order of Railway Conductors and Brakemen or to the plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

And wish to remain in Brotherhood of Railroad Trainmen in good standing.

Robert V. Miller,
Cond.,
Rsbg., Oregon.

Witness: J. W. Beardsley.
Witness: M. E. Borgaard.

(Copy) Springfield, Ore.
4/22/57

I Thomas A. Henderson have been named as similarly situated as individuals to plaintiff Marion S. Felter in pending suit against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

I was contacted by M. G. Breuner, local chairman of the ORC&B and asked by him to sign a complaint against the Brotherhood of Railroad Trainmen and be part of a suit naming the organization and the Southern Pacific Co. for not honoring the wage revocation cards which they have had printed.

I did in no way give my name, sign any form or allow them to use my name for any purpose of bringing suit against the Brotherhood of Railroad

Trainmen or the Southern Pacific Co. I wish to remain a member of the Brotherhood of Railroad Trainmen..

Thomas A. Henderson,
Conductor,
Springfield, Oregon.

Witness: M. E. Borgaard.
Witness: J. W. Beardsley.

(Copy) Eugene, Oregon
April 22, 1957

I, Jacob J. Ploub Jr. did in no way give to the Order of Railway Conductor and Brakeman or to plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen and I do not wish to be included this suit with Marion S. Felter against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Jacob J. Ploub Jr.,
Conductor,
Eugene, Oregon.

Witness: M. E. Borgaard.
Witness: J. W. Beardsley.

(Copy) Eugene, Oregon
April 22, 1957

I Willis E. Haight did in no way give to the Order of Railway Conductor and Brakeman or to plaintiff Marion S. Felter my name as individuals

similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen. And I do not wish to be included in this suit with Marion S. Felter against the Brotherhood and the Southern Pacific Co.

Willis E. Haight,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon
April 22, 1957

I, James E. Smith, did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Although my membership in the Brotherhood of Railroad Trainmen terminates as of May first 1957, I do not wish to be included in this pending suit.

James E. Smith,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy) Springfield, Oreg.
April 23, 1957

I Harvey E. Harmon did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Harvey E. Harmon,
Conductor,
Springfield, Oregon.

Witness: J. W. Beardsley.
Witness: M. E. Borgaard.

(Copy) Eugene, Oregon
April 23, 1957

I, Harold C. Barker, did not give the Order of Railway Conductors and Brakemen or the Plaintiff Marion S. Felter permission to use my name in a suit against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

I wish to state that I had no trouble getting a release from the Railroad Trainmen after I properly requested a A-2 Card from Secretary John Beardsley which was promptly furnished me without any delay.

Harold C. Barker,
Conductor SP Co.,
Eugene, Oregon.

Witness: M. E. Borgaard.
Witness: J. W. Beardsley.

(Copy) Springfield, Ore.
April 22, 1957

I, Charles N. Speight, did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Charles N. Speight,
Conductor,
Springfield, Oregon.

Witness: M. E. Borgaard.
Witness: J. W. Beardsley.

(Copy) Eugene, Ore.
4-22-57

I, Clarence W. Everts, Sr. did in no way give my name to the Order of Railroad Conductors and Brakemen or to the plaintiff Marion S. Felter to be used in Civil Action Suit against the Brotherhood of Railroad Trainmen or the Southern Pacific Company.

I was never contacted by anyone of the Order of Railroad Conductors and Brakemen or by Marion S. Felter and therefore my name used in this civil action, and as I have been identified as similarly situated to the plaintiff Mr. Marion S. Felter. I wish to state that the using of my name is against my will and judgment and without my permission.

I wish to remain a member of the Brotherhood of Railroad Trainmen and in no way be involved

in a civil action against my organization or my employer The Southern Pacific Company.

Clarence W. Everts Sr.,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon
April 22, 1957

I, Fred A. Copeland did in no way give to the Order of Railway Conductors and Brakemen or to plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen and I do not wish to be included in this suit with Marion S. Felter against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Fred A. Copeland,
Conductor,
Eugene, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT OR TO DISMISS

The defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, move the court as follows:

For summary judgment in their favor and in favor of the Southern Pacific Company, a corporation, and against plaintiff, Marion S. Felter on behalf of himself and others similarly situated, for the reason that there is no dispute about the facts or the agreement in question. The only dispute arises on the reasonableness of the agreement and the interpretation of the agreement as a matter of law in the light of the applicable provisions of the Railway Labor Act and particularly of that portion of the Railway Labor Act covered in 45 U.S.C.A. 152, Eleventh (b). In this connection it is the position of both the Southern Pacific Company and the Brotherhood of Railroad Trainmen and its defendant officers that a proper interpretation of the law and the "Dues Deduction Agreement" previously introduced in evidence on the hearing for continuing and restraining order support the position taken by the Brotherhood and its officers herein to defeat the position taken by the plaintiff, *Milton* S. Felter, on behalf of himself and others similarly situated. The question involved

is merely a matter of legal interpretation of the law with reference to the undisputed facts.

HILDEBRAND, BILLS & McLEOD,

/s/ By CLIFTON HILDEBRAND,

Attorneys for Defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen, and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF M. G. BREUNER

State of California
City and County of San Francisco—ss.

M. G. Breuner, being first duly sworn, deposes and says:

Your affiant resides at 100 Gilham Road, Eugene, Oregon.

At all times mentioned herein your affiant is and has been the local chairman of Division Number 526 of the Order of Railway Conductors. In such capacity, affiant has dealt with the plaintiff, Marion S. Felter, in the above entitled matter, and with the other persons similarly situated to the plaintiff

in connection with the subject of this action, and affiant has personal knowledge as to the circumstances involved and hereinafter set forth.

I have read the affidavits of J. W. Beardsley dated April 19, 1957, and on file in the above entitled matter, and the affidavit of Clifton Hildebrand dated April 29, 1957, also on file herein.

With respect to the persons named in the affidavit of Clifton Hildebrand, following are the facts as I know them:

Glenn H. Ross, Thomas A. Henderson, Jacob J. Ploub, Jr., Clarence W. Everts, Sr., and Fred A. Copeland each executed wage assignment revocation forms on or about March 30, 1957, or prior thereto, and said wage assignment revocation forms were forwarded by me on behalf of said individuals to J. W. Beardsley, Secretary and Treasurer of Lodge Number 314 of the Brotherhood of Railroad Trainmen at Eugene, Oregon.

Robert W. Miller, James E. Smith and Harold C. Barker likewise executed the same type of wage assignment revocation forms on or about the same date, and said forms were forwarded by me to J. W. Beardsley. Thereafter James E. Smith and Harold C. Barker each obtained another wage assignment revocation form from the Brotherhood of Railroad Trainmen, which they executed. However, to my knowledge, the Brotherhood of Railroad Trainmen has not honored the aforesaid revocation form submitted for Robert W. Miller.

Harvey E. Harmon and Charles N. Speight on

or about March 30, 1957, each executed wage assignment revocation forms, which in turn were forwarded by me both to J. W. Beardsley of the Brotherhood of Railroad Trainmen and to L. R. Smith, Superintendent, Portland Division, Southern Pacific Company. To the knowledge of your affiant, the Brotherhood of Railroad Trainmen and the Southern Pacific Company have refused and are refusing to honor said forms submitted on behalf of Harvey E. Harmon and Charles N. Speight.

With regard to Willis E. Haight, no wage assignment revocation form was executed by Mr. Haight and his inclusion on the list of those similarly situated to Marion S. Felter in the original pleadings on file herein was an error.

In addition to the persons named above, Don T. Skundrick and Walter M. Skundrick are similarly situated to the plaintiff in this action in that on or about March 30, 1957, or prior thereto, they executed wage assignment revocation forms, which forms were forwarded by me on their behalf to Lodge Number 130 of the Brotherhood of Railroad Trainmen in Portland, Oregon. To the knowledge of your affiant, these wage assignment revocation forms have not been honored by the Brotherhood of Railroad Trainmen.

In addition to those above named, J. L. Graham, R. E. Biddle and J. J. Nelson are now similarly situated to the plaintiff, in that they have executed wage assignment revocation forms to be effective May 1, 1957, which forms have been forwarded by

me on their behalf to J. W. Beardsley of the Brotherhood of Railroad Trainmen and to the said L. R. Smith of the Southern Pacific Company. Attached hereto as Exhibit A is a copy of my letter of April 26, 1957, to L. R. Smith in connection with the wage assignment revocation forms of the said J. L. Graham, R. E. Biddle and J. J. Nelson. Based upon the position taken by the Brotherhood of Railroad Trainmen, as set forth in the aforementioned affidavit of J. W. Beardsley, and the position taken by the Southern Pacific Company in these proceedings, it appears that the wage assignment revocation forms of the said J. L. Graham, R. E. Biddle and J. J. Nelson will not be honored as of May 1, 1957, and therefore said persons are similarly situated to the plaintiff herein.

As to R. W. Kinkade, mentioned in my letter of April 26, 1957, at appears from Mr. Beardsley's affidavit that a wage assignment revocation form heretofore submitted by Mr. Kinkade will be honored.

Referring to my letter of March 30, 1957, to Mr. L. R. Smith of the Southern Pacific Company, which letter is attached as Exhibit C to the affidavit of Richard B. McDonough dated April 16, 1957, on file herein; and based upon the hereinabove recited facts, it now appears that within your affiant's knowledge the following listed persons are presently similarly situated to Marion S. Felter. Each of these persons had notice of the

institution of this litigation by the plaintiff and acquiesced or do now acquiesce in the bringing of this action by the plaintiff on behalf of himself and others similarly situated. Said persons are as follows:

H. E. Counts	Harvey E. Harmon
E. H. Stankey	Charles N. Speight
A. E. Ebbensen	Don T. Skundrick
L. A. West	Walter M. Skundrick
H. R. Robinson	J. L. Graham
Charles Vincent	R. E. Biddle
Robert V. Miller	J. J. Nelson

All of the above named persons, together with Marion S. Felter, the plaintiff, are members of the Order of Railway Conductors, and the Order of Railway Conductors is their bargaining agent. Under these circumstances and pursuant to the terms of the Railway Labor Act and the union shop agreements between the Southern Pacific Company and the Brotherhood of Railroad Trainmen and the Order of Railway Conductors, the job status, the seniority and the union membership of these employees of the Southern Pacific Company may in no way be affected by any action of the Brotherhood of Railroad Trainmen or of the Southern Pacific Company by reason of the withdrawal of these employees, or any of them, from membership in the Brotherhood of Railroad Trainmen, or by reason of the failure of the company to deduct dues and other moneys from the compensation of these employees for payment to the Broth-

erhood of Railroad Trainmen during the pendency of the temporary restraining order in the above entitled matter or subsequent proceedings. This is true for the reason that both the law and the said union shop agreements permit the above named employees to change their membership from the Brotherhood of Railroad Trainmen to the Order of Railway Conductors, without loss of benefits, seniority or job security, and in making such change the above named employees have acted fully within their rights guaranteed to them by law and said agreements. Similarly, under the law no further deductions should be made from their wages for payment of any moneys to the Brotherhood of Railroad Trainmen by reason of the fact that each one of said employees has filed with the company and with the Brotherhood a revocation of all authority heretofore given to make such deductions.

/s/ M. G. BREUNER.

Subscribed and sworn to before me this 30th day of April, 1957.

[Seal] /s/ GEORGETTE LINDEY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Acknowledgment of Service Attached.

EXHIBIT "A"

Order of Railroad Conductors
Division Number 526
Southern Pacific Lines
Eugene, Oregon

April 26, 1957

Mr. L. R. Smith, Superintendent
Portland Division—Southern Pacific Company
Portland, Oregon

Dear Sir:

Herewith properly signed Dues Deduction Revocation forms. These forms have been signed by employees working in the class and craft of conductors-brakemen, who had previously signed Wage Deduction Authorizations for the dues to be paid to the Brotherhood of Railroad Trainmen.

While this Revocation of Dues Deduction form has also been forwarded to the proper Treasurer of the Brotherhood of Railroad Trainmen, it is our understanding that he may decline to submit same to you for the purpose of it being made effective.

So that the employee whose signature appears on the enclosed forms may, under the circumstances, be sure that the Carrier has received such revocation, he has personally requested that I transmit these forms to you.

Will you kindly place in effect the Revocation of Dues Deduction for the men herewith listed, for whom the proper cards are enclosed.

The men involved are: J. L. Graham, R. W. Kinkade, R. E. Biddle, J. J. Nelson.

Respectfully yours,

M. G. Breuner.

[Endorsed]: Filed May 2, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF H. F. BROWN

State of California
City and County of San Francisco—ss.

H. F. Brown, being first duly sworn, deposes and says:

Affiant is and has been at all times mentioned herein the Chairman of the General Committee of Adjustment of the Order of Railway Conductors; that in such capacity he has knowledge of and is familiar with the facts and circumstances involved in the above entitled matter.

In addition to the persons named in the affidavit of M. G. Breuner on file herein, your affiant has knowledge that the following named persons are also similarly situated to the plaintiff, Marion S. Felter, in the above matter, in that they have withdrawn from membership in the Brotherhood of Railroad Trainmen and each of them has submitted an executed wage assignment revocation form to the Brotherhood of Railroad Trainmen and to the Southern Pacific Company. Based upon the position taken by the Brotherhood of Railroad Train-

men in connection with this matter as set forth in the affidavit of J. W. Beardsley on file herein, and the position taken by the Southern Pacific Company in the above litigation, it appears that the wage assignment revocation forms submitted on behalf of the persons named below will not be honored. Each of said employees of the Southern Pacific Company has joined the Order of Railway Conductors. They are as follows:

Jack E. H. Gray, 711 North Oregon Street, El Paso, Texas.

Frank J. Sebastian, 7602 Parral Road, El Paso, Texas.

Frank P. Kennison, 1820 Park Blvd., Oakland, California.

Attached to this letter are copies of the letters sent by Jack E. H. Gray and Frank J. Sebastian to the Southern Pacific Company and to the Brotherhood of Railroad Trainmen, effecting their wage assignment revocation and their withdrawal from the Brotherhood of Railroad Trainmen.

/s/ H. F. BROWN

Subscribed and sworn to before me this 30th day of April, 1960.

[Seal] /s/ GEORGETTE LINDEY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Mr. J. W. Donnelly, Treas.
BRT Lodge #651
1416 Oakdale Dr.
El Paso, Texas

El Paso, Texas
April 19, 1957

Dear Sir and Brother:

Effective June 1, 1957, I hereby withdraw from the Brotherhood of Railroad Trainmen.

My dues and assessments for the month of May will be paid by deduction from my paycheck on the check-off system.

Fraternally yours,

Jack E. H. Gray,
711 North Oregon,
El Paso, Texas.

cc: Mr. J. H. Long, Supt.
Southern Pacific Railway Co.
El Paso, Texas

El Paso, Texas
April 19, 1957

Mr. J. H. Long, Supt.
Southern Pacific Railway Co.
El Paso, Texas

Dear Sir:

Attached is copy of letter mailed this date to the Treasurer of BRT Lodge #651. You will note that as of June 1st I am terminating my membership in the Brotherhood of Railroad Trainmen, and in accordance with the Railway Labor Act as amended, Section 2 Eleventh, this is written notice that, after deduction from my pay check of Brotherhood of Railroad Trainmen's dues and assessments for the month of May, 1957, I respectfully request no fur-

ther deductions be made for such dues and/or assessments for the Brotherhood of Railroad Trainmen.

I am also attaching signed copy of the form revocation notice which I understand is required under the check-off agreement between the BRT and the Southern Pacific Railroad Company.

Respectfully yours,

Jack E. H. Gray,
711 N. Oregon,
El Paso, Texas.

cc: Mr. J. W. Donnelly, Treas.
BRT Lodge #651

Mr. J. W. Donnelly
Treas., BRT Lodge #651
1416 Oakdale Dr.
El Paso, Texas

El Paso, Texas
April 19, 1957

Dear Sir and Brother:

Effective May 1, 1957, I hereby withdraw from the Brotherhood of Railroad Trainmen.

My dues and assessments for the month of April will be paid by deduction from my paycheck on the check-off system.

Fraternally yours,

Frank J. Sebastian,
7602 Parral Rd.
El Paso, Texas.

cc: Mr. J. H. Long, Supt.
Southern Pacific Railway Co.
El Paso, Texas

Mr. J. H. Long, Supt. El Paso, Texas
Southern Pacific Railway Co. April 19, 1957
El Paso, Texas

Dear Sir:

Attached is copy of letter mailed this date to the Treasurer of BRT Lodge #651. You will note that as of May 1st I am terminating my membership in the Brotherhood of Railroad Trainmen, and in accordance with the Railway Labor Act as amended, Section 2 Eleventh, this is written notice that, after deduction from my pay check of Brotherhood of Railroad Trainmen's dues and assessments for the month of April, 1957, I respectfully request no further deductions be made for such dues and/or assessments for the Brotherhood of Railroad Trainmen.

I am also attaching signed copy of the form revocation notice which I understand is required under the check-off agreement between the BRT and the Southern Pacific Railroad Company.

Respectfully yours,

Frank J. Sebastian,
7602 Parral Road,
El Paso, Texas.

cc: Mr. J. W. Donnelly, Treas.
BRT Lodge #651
1416 Oakdale Dr.
El Paso, Texas

Acknowledgment of Service Attached.

[Endorsed]: Filed May 2, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, Marion S. Felter, on behalf of himself and others similarly situated, and moves the Court as follows:

For a summary judgment in favor of the plaintiff and others similarly situated against the defendant Southern Pacific Company, a corporation; and against the defendants Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as General Secretary, General Committee, Brotherhood of Railroad Trainmen, permanently enjoining and restraining the defendant Southern Pacific Company from deducting from the wages of the plaintiff and others similarly situated any periodic dues, initiation fees and/or assessments, and paying the same to the defendant Brotherhood of Railroad Trainmen, its agents or representatives; and permanently enjoining and restraining the Brotherhood of Railroad Trainmen, its officers and components, from claiming and receiving from the Southern Pacific Company any portion of the wages due plaintiff and others similarly situated; and permanently enjoining and restraining each of the above named defendants from otherwise performing any acts which would have the effect of deducting any sums from the wages of the plaintiff and others similarly situated to be paid to and

received by the Brotherhood of Railroad Trainmen, or any of the officers or components thereof; and that this moving plaintiff be awarded his costs and such other and further relief as may be meet and proper in the premises.

This motion is based upon the files and records in the above entitled court and cause, and particularly upon the Complaint for Declaratory and Injunctive Relief filed herein by plaintiff, on behalf of himself and others similarly situated, the Answer to the complaint filed herein by the defendant Brotherhood of Railroad Trainmen, and the officers and components thereof, and the affidavits and other evidence in the record.

In presenting the foregoing motion, counsel for this moving plaintiff, on behalf of himself and others similarly situated, will contend that upon the files and records herein there is no substantial, if any, issue of fact, as between the parties hereto; that the only substantial issues before the Court concern the validity of the written revocations of their assignment of wages for the payment of dues to the Brotherhood of Railroad Trainmen by the plaintiff and others similarly situated, which written revocations are acknowledged to have been received by the defendants; and that in this connection it is the position of this moving plaintiff and others similarly situated that by reason of the provisions of Section 2, Eleventh of the Railway Labor Act (45 U.S.C.A. 15,211), defendant Southern Pa-

cific Company is without authority to make such deductions from the wages of the plaintiff and others similarly situated, and defendants Brotherhood of Railroad Trainmen, its officers and components, are without authority to receive such moneys; that the continued refusal on the part of the defendants to honor the said revocations of assignment of wages has injured and continues to injure the moving plaintiff and others similarly situated by depriving them of their rights guaranteed by law to withdraw from membership in the Brotherhood of Railroad Trainmen and to revoke in writing after the expiration of one year any written assignment to the Brotherhood of Railroad Trainmen of membership dues, initiation fees and/or assessments; that any agreement between the defendant Southern Pacific Company and the defendant Brotherhood of Railroad Trainmen which purports to prevent the plaintiff and others similarly situated from revoking in writing said assignments of wages, except in the manner provided by law, is invalid and of no force and effect as against this moving plaintiff and others similarly situated.

Dated May 3, 1957.

CARROLL, DAVIS & BURDICK,

/s/ By ROLAND C. DAVIS,
Attorneys for Plaintiff.

[Endorsed]: Filed May 3, 1957.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes now the defendant, Southern Pacific Company, a corporation, and for answer to the complaint filed herein states the following:

I.

Said defendant admits the allegations in paragraphs I to VII, inclusive.

II.

Defendant admits the allegations in paragraphs VIII, IX and X of the complaint.

III.

In answer to paragraph XI of the complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first sentence thereof and, therefore, denies that on or before March 1, 1956, or at any time, plaintiff and others similarly situated terminated their membership in the Brotherhood. With regard to remainder of the allegations contained in paragraph XI of the complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that on or before March 1, 1956, the plaintiff and others similarly situated sent a written revocation of their assignment of wages for the payment of dues to the Brotherhood to the defend-

ant Brotherhood and therefore denies said allegation. Defendant admits that plaintiff and others similarly situated sent to the defendant carrier so-called written revocations of their assignment of wages for the payment of dues to the Brotherhood except that it denies that said revocations were sent on or before March 1, 1956, and defendant further alleges that so-called written revocations were not handled through the designated secretary and treasurer of the Brotherhood of Railroad Trainmen and did not comply with the dues deduction agreement in this connection.

IV.

In answer to paragraph XII of the complaint, the defendant admits the allegations thereof but alleges that the so-called written revocations were not submitted to the defendant carrier in the manner required by the dues deduction agreement.

V.

In answer to paragraph XIII, defendant is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the allegations of paragraph XIII.

VI.

Defendant admits the allegations of paragraph XIV.

VII.

Defendant denies that plaintiff or others similarly situated did disavow the Brotherhood as their representative for collective bargaining purposes

so long as they were working in the class or craft of trainmen because the Brotherhood was at all times material hereto certified under the Railway Labor Act to represent such class or craft. Defendant admits the other allegations of paragraph XV of the complaint, but alleges that the refusal of defendant carrier to honor the purported revocations of assignment of wages to the Brotherhood of which plaintiff and others similarly situated are allegedly no longer members is based solely upon the fact that the same were not presented in accordance with the applicable collective bargaining agreement between defendant carrier and the Brotherhood.

Wherefore, defendant Southern Pacific Company, a corporation, prays that this Court grant the relief asked for in paragraph (1) of the prayer of the complaint and deny the remainder of the relief requested by plaintiff in his complaint.

Dated: May 8, 1957.

BURTON MASON,
W. A. GREGORY,
H. S. LENTZ,

/s/ By W. A. GREGORY,
Attorneys for Defendant,
Southern Pacific Company.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 8, 1957.

In the United States District Court, Northern District of California, Southern Division

No. 36348

MARION S. FELTER, on behalf of himself and others similarly situated, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, etc., Defendants.

ORDER

The cross motions for summary judgment which are before this court involve an interpretation of Section 2, Eleventh of the Railway Labor Act, 45 U.S.C. 152, Eleventh. The pertinent parts of this section read:

* * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that * * * all employees shall become members of the labor organization representing their craft or class: * * *

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of

its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied * * * if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; * * * Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from an organization to another organization admitting to membership employees of a craft or class in any of said services.

Pursuant to the permission granted by the Act, defendants Southern Pacific Company and Brotherhood of Railroad Trainmen entered into a dues deduction agreement. The agreement provided that

employee members of the Brotherhood could authorize deductions from their wages, or revoke such authorization, by completing prescribed forms to be reproduced and furnished by the Brotherhood. The Brotherhood was to notify the Company of these wage assignments and revocations of wage assignments by forwarding the completed forms, together with deduction lists, by the fifth day of each month. The assignments and revocations thus forwarded would be effective as of the first day of that month.

Plaintiff is employed as a conductor by the Southern Pacific Company. On or before February 1, 1956, plaintiff executed a wage assignment in accordance with the above agreement. After this assignment had been in effect for over a year, he decided to change his membership to the Order of Railway Conductors and Brakemen,[1] and he so notified the Brotherhood in a letter dated March 30, 1957 and received by the Brotherhood on April 2nd. At the same time, wage assignment revocation cards were furnished by the ORCB, completed by plaintiff and forwarded by the ORCB to the Brotherhood and the Company. These cards followed the form prescribed by the dues deduction agreement and in all material respects were identical with the cards furnished by the Brotherhood. The card sent to the Company was forwarded by the Company to the Brotherhood in a letter dated April 1, 1957, while the card which came directly from the ORCB was received by the Brotherhood on March 30th.

The Brotherhood replied to plaintiff's letter in a

[1] Formerly the Order of Railroad Conductors.

letter dated April 2nd, stating that the cards furnished by the ORCB were not acceptable because the dues deduction agreement provided that wage assignment revocation cards were to be reproduced and furnished by the Brotherhood. The letter went on to state that one of the Brotherhood's cards was enclosed and that as the wage assignment papers for April were to be forwarded to the Company the next morning, the new card would not be effective until May 1st.

Plaintiff did not complete the new card furnished by the Brotherhood; the Brotherhood did not forward plaintiff's name to the Company as one whose wage assignment was to be revoked; and the Company therefore continued to regard plaintiff's wage assignment as in full effect. This action was brought on behalf of plaintiff "and others similarly situated,"[2] seeking, together with appropriate injunctive relief, a determination that the action of the Brotherhood and the Southern Pacific Company in refusing to accept plaintiff's attempted revocation of wage assignment is a violation of plaintiff's rights under the Railway Labor Act.

Neither side presses this court for an interpretation of the dues deduction agreement. The sole question is whether the agreement as interpreted by the defendants is violative of the Railway Labor Act.

Although the proviso in Section 2, Eleventh (c) protecting the employee's right to change unions is

[2] There is some dispute as to whether there are in fact others similarly situated, but this question does not affect the outcome of the case.

in terms wholly unrestricted, it must be given a workable interpretation. A change in unions, and thus a change in dues deductions, obviously involves many bookkeeping and records changes on the railroad's part. It follows from this that employees cannot willy-nilly skip from one union to another, that some sort of orderly procedure has to be established. The dues deduction agreement between the Brotherhood and the Company sought to establish just such an orderly procedure. The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions.

The part of the withdrawal procedure which is complained of is the requirement that a revocation card must be secured from the Brotherhood. While this requirement may seem a bit arbitrary, it certainly is no burden. It is easily complied with, and is not appreciably more difficult than securing a revocation card from some other source. The only burden here would seem to be on the rival union, which perhaps cannot as easily recruit new members; and this is not determinative of the issue. Pennsylvania Railroad Company et al. v. Rychlik, 352 U.S. 480 (1957).

Accordingly, this court holds that the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act. It is ordered that the temporary restraining

order heretofore issued on April 12, 1957 be dissolved and that the action be dismissed.

Dated: May 24th, 1957.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed May 24, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Marion S. Felter, on behalf of himself and others similarly situated, plaintiff above named in the above entitled cause, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 24, 1957.

CARROLL, DAVIS & BURDICK,
/s/ By ROLAND C. DAVIS,
Attorneys for Plaintiff.

[Endorsed]: Filed June 20, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute

the record on appeal herein as designated by counsel for the appellants:

Excerpt from Docket Entries

Complaint

Affidavit of Richard B. McDonough

Bond for Temporary Restraining Order

Order to Show Cause and Temporary Restraining Order

Affidavit of Richard B. McDonough

Affidavit of J. W. Beardsley

Second Affidavit of J. W. Beardsley

Answer of Brotherhood of Railroad Trainmen; J. J. Corcoran, General Chairman and J. E. Teague, Secretary

Affidavit of Clifton Hildebrand

Notice of Motion and Motion of Brotherhood of Railroad Trainmen et al. for Summary Judgment

Affidavit of M. G. Breuner

Affidavit of H. F. Brown

Notice of Motion and Motion of Plaintiff for Summary Judgment

Answer of Southern Pacific Company

Order of Court Dissolving Temporary Restraining Order and Dismissing the Complaint

Notice of Appeal

Order Granting Supersedeas

Supersedeas Bond

Designation of Record on Appeal

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court this 25th day of July, 1957.

[Seal] C. W. CALBREATH,
Clerk,

/s/ By MARGARET P. BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

STIPULATION CORRECTING AND SUPPLEMENTING RECORD ON APPEAL

Is Is Hereby Agreed and Stipulated by and among all parties in the above entitled matter that:

That certain agreement dated June 23, 1955, between the Southern Pacific Company (Pacific Lines), excluding lines formerly operated by the EP&SW, and the Brotherhood of Railroad Trainmen, commonly referred to as the "Dues Deduction Agreement," a true and correct copy of which is attached to this stipulation and incorporated herein by reference, is material to all parties and the inclusion of said agreement in the record on appeal in the above entitled matter is necessary for a full and final determination of the issues on appeal.

Said agreement was before this Court during the proceedings leading to the final order of this Court from which appeal is being taken. However, by error, accident or inadvertence, said agreement in its entirety was omitted from the record and, therefore, could not be designated as a part of the record

on appeal or transmitted by the Clerk of the District Court as part of said record.

In view of the foregoing circumstances, it is hereby stipulated and agreed by the parties hereto that this Court may direct that the omission of the aforesaid agreement, copy of which is attached hereto and made a part hereof, from the record should be corrected; and that this Court may direct that a supplemental record consisting of a true and correct copy of said agreement in its entirety shall be certified and transmitted by the Clerk of the District Court to the United States Court of Appeals for the Ninth Circuit as a part of said record on appeal.

Dated August 22, 1957.

CARROLL, DAVIS & BURDICK,
/s/ By ROLAND C. DAVIS,
Attorneys for Plaintiff.

BURTON MASON,
W. A. GREGORY,
/s/ By W. A. GREGORY,
Attorneys for Defendant Southern Pacific Company.

HILDEBRAND, BELLS & McLEOD,
/s/ By CLIFTON HILDEBRAND,
Attorneys for Defendants Brotherhood of Railroad Trainmen, J. J. Corcoran and J. E. Teague.

Approved and So Ordered: Aug. 28, 1957.

/s/ OLIVER J. CARTER,
District Judge.

TRN 1-685

AGREEMENT

This agreement, made at San Francisco, California, this 23rd day of June, 1955, by and between the Southern Pacific Company (Pacific Lines), excluding lines formerly operated by the EP&SW, hereinafter referred to as the Company, and the Brotherhood of Railroad Trainmen, hereinafter referred to as the Organization,

It Is Agreed:

1 (a). Subject to the terms and conditions of this agreement the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Organization by members thereof from wages earned in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto, copy of which is attached as Attachment "A" and made a part hereof.

(b). The signed authorization may, in accordance with its terms, be revoked in writing at any time after the expiration of one year from the date of its execution, or upon the termination of this agreement, or upon the termination of the rules and working conditions agreement between the parties, whichever occurs sooner. Revocation of the authorization shall be in the form agreed upon by the par-

ties, copy of which is attached as Attachment "B" and made a part hereof.

(c). Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.

2. Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employe is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a). A list showing any changes in the amounts to be deducted from the wages of employes with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employes from whose wages no further deductions are to be made

which shall be accompanied by revocation of assignment forms signed by each employe so listed. Where no changes are to be made the list shall so state.

(b). A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employee so listed. Where there are no such additional employes the list shall so state.

3. Deductions as provided for herein will be made monthly by the Company from wages due employes for the first period in each calendar month, and the Company will, subject to the provisions of paragraph 4 hereof, remit to the Organization, the total amount of such deductions, less sums withheld in accordance with paragraph 5, on or before the 15th day of the month following the month in which such deductions are made. With such remittance the Company will furnish to the Treasurer of the Local Lodge a statement showing employes from whom deductions were made and amount of deductions.

4 (a). In the event earnings of an employe are insufficient to permit the full amount of deduction, no deduction will be made and responsibility for collection shall rest entirely with the Organization.

(b). The following payroll deductions shall have priority over deductions covered by this agreement:

Federal, State and Municipal taxes and other deductions required by law, including garnishments and attachments

Amounts due the Company

Group Life and Southern Pacific Hospital Department contributions

Prior valid assignments and deductions.

(c). In cases where no deduction is made from the wages of an employe due to insufficient earnings, or for other reasons, the amounts not deducted shall not be added to deduction lists for the employe for any subsequent payroll period.

5. In consideration of the services herein described, the Organization agrees that the Company shall retain from the sum of all deductions made in each month six (6) cents per employe from whom deduction is made in such month, and remit to the Treasurer of the Local Lodge the balance due the Organization.

6. Responsibility of the Company under this agreement shall be limited to remitting the amounts actually deducted from wages of employes pursuant to this agreement, subject to paragraph 5, and the Company shall not be responsible financially or otherwise for failure to make deductions or for making improper or inaccurate deductions. Any question arising as to the correctness of the amount deducted shall be handled between the employe involved and the Organization.

7. The Organization shall indemnify, defend and save harmless the Company from any and all claims, demands, liability, losses or damage resulting from the entering into or complying with the provisions of this agreement.

8. This agreement shall become effective August 1st, 1955.

Signed at San Francisco, California, this 23rd day of June, 1955.

For: Southern Pacific Company (Pacific Lines):
/s/ K. K. SCHIMP,
Manager of Personnel.

For: The Brotherhood of Railroad Trainmen:
/s/ J. J. CORCORAN,
General Chairman.
/s/ J. E. TEAGUE, JJC,
Secretary, General Committee.

Form Approved: Form of Execution Approved:
/s/ BURTON MASON,
Attorney.

ATTACHMENT "A"

Wage Assignment Authorization

I hereby assign to the Brotherhood of Railroad Trainmen that part of my wages necessary to pay my monthly union dues, fees, assessments, initiation fees, and insurance premiums (not including fines and penalties) as reported to the Southern Pacific Company by the Treasurer of my Local Lodge in monthly statements, certified by him, as provided under the Deduction Agreement entered into by and between the Organization and the Company; and I hereby authorize the Company to deduct from my wages all such sums and to pay them over to the Treasurer of my Local Lodge.

This authorization may be revoked by the undersigned in writing, after the expiration of one (1)

year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner.

Name .....
(Last) (First) (Middle Initial)
Employe Account No.....
Home Address..... Division.....
(Street and Number)
..... Occupation.....
(City or Town)
....., 19.....
(Date) (Signature)

.....
(Lodge No.)

ATTACHMENT "B"

Wage Assignment Revocation

Effective....., I hereby revoke the Wage Assignment Authorization now in effect assigning to the Brotherhood of Railroad Trainmen that part of my wages necessary to pay my monthly dues, assessments, initiation fees and insurance premiums, now being withheld pursuant to the Deduction Agreement between the Organization and the Company, and I hereby cancel the authorization now in effect authorizing the Company to deduct such monthly union dues, assessments, initiation fees and insurance premiums from my wages.

Name .....
(Last) (First) (Middle Initial)

Employe Account No.....
Home Address..... Division.....
(Street and Number)
..... Occupation.....
....., 19.....
(Date) (Signature)
.....
(Lodge No.)

[Endorsed]: Filed Aug. 28, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the supplemental record on appeal herein, as stipulated by counsel:

Stipulation correcting and Supplementing Record on Appeal with Order.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 29th day of August, 1957.

[Seal] C. W. CALBREATH,
Clerk,

/s/ By MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15644. United States Court of Appeals for the Ninth Circuit. Marion S. Felter, on behalf of himself and others similarly situated, Appellant, vs. Southern Pacific Company, a Corporation, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: July 25, 1957.
Docketed: July 27, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,644

MARION S. FELTER, on behalf of himself and others similarly situated, Appellant,

vs.

SOUTHERN PACIFIC COMPANY et al., Appellees.

STATEMENT OF POINTS TO BE RELIED ON

The appellant, Marion S. Felter, on behalf of

himself and others similarly situated, will rely upon the following points on the appeal herein:

(1) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act (45 U.S.C. Section 151 et seq.) to the extent that it unlawfully limits and restricts the appellant's statutory right of revocation of dues assignments.

(2) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company, as interpreted and applied by the parties thereto, is invalid under the Railway Labor Act in that it unlawfully limits and restricts the appellant's statutory right of revocation of the assignment by requiring appellant (a) to obtain revocation forms from the Brotherhood of Railroad Trainmen (b) that are reproduced and furnished by that organization (c) and that must be returned to that organization for delivery by it to the Southern Pacific Company.

(3) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as interpreted and applied by the parties thereto, unlawfully requires or permits the deduction of dues, initiation fees or assessments from appellant's wages and payment of the same to a labor organization other than that in which appellant holds membership.

(4) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as interpreted and applied by the parties, unlawfully requires or permits the deduction of dues, initiation fees or assessments from appellant's wages after appellant has executed and furnished his employer with a revocation in writing as provided by the Railway Labor Act.

(5) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as applied and interpreted by the parties thereto, unlawfully (a) interferes with, influences or coerces the appellant and others similarly situated in their choice of representatives, (b) restricts or denies the right of the appellant and others similarly situated to join a labor organization of their choice, and (c) influences or coerces the appellant and others similarly situated in an effort to induce them to join or remain or not to join or remain members of a particular labor organization.

Dated September 3, 1957.

CARROLL, DAVIS & BURDICK,
/s/ By ROLAND C. DAVIS,
Attorneys for Appellant.

[Endorsed]: Filed Sept. 5, 1957. Paul P. O'Brien, Clerk.

[fol. 84]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—April 3, 1958 (omitted in printing)

[fol. 85]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: Healy, Fee and Barnes, Circuit Judges.

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—May 12, 1958

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 86]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,644

MARION S. FELTER, on behalf of himself and others similarly situated, Appellant,

v.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees.

Appeal from the United States District Court for the Northern District of California, Southern Division

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OPINION—May 12, 1958

Before: Healy, Fee, and Barnes, Circuit Judges

HEALY, Circuit Judge

The Railway Labor Act, 45 USCA §152, grants the right of collective bargaining, the right of employees freely to join a recognized union, etc. Subsection "Eleventh (b)" of §152, relevant here, provides, among other things, that any carrier and a labor organization shall be permitted "to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be [fol. 87] effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Appellees Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues check off agreement such as is contemplated by the above provision. As part of this agreement it was stipulated that "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization [union] without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company." The agreement contained provisions to the effect that deductions be made by the Company in accordance with lists of employees forwarded by the Union. It was further provided that thereafter two lists be furnished each month by the Union, one showing additional employees and one showing changes in amounts and the names of any employees for whom no further deductions should be made. The list was to "be

accompanied by revocation of assignment forms signed by each employee so listed."

Appellant was employed as a conductor for Southern Pacific. He executed an assignment form provided by appellee Brotherhood, of which union he was then a member, and thereafter his union dues were regularly deducted. After the passage of more than a year he joined another union, the Order of Railway Conductors and Brakemen. [There was no impropriety in his joining this union inasmuch as the Railway Labor Act protects the employee's right to change unions if he desires to do so.] Appellant then obtained, filled out and signed a form to terminate his assignment of wages, this form being printed and furnished by his new union. In all material respects it was identical with the form as printed by his former union. The revocation form was sent to the Railroad Company, and the Company forwarded it to the Brotherhood. Appellee Brotherhood immediately wrote appellant, sending him a form provided by it and requesting that he fill it out and return it so that his assignment could be revoked by the list the [fol. 88] union was then preparing for submission to the Railroad Company under the terms of the agreement.

Appellant never returned the proffered form to the Brotherhood. Accordingly, the Railroad Company did not terminate appellant's dues assignment and has continued to deduct dues for the Brotherhood, his former union.

There appears to be no dispute as regards the facts; and the only issue raised by appellant is whether the agreement, as interpreted by the appellees, to require a revocation to be on a form furnished by the union from which he had withdrawn, is violative of the Railway Labor Act. His argument is that the Act says a wage assignment "shall be revocable in writing" and that by requiring this writing to be on a particular form is a requirement which goes beyond what is permitted by the Act.

The trial judge was of opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the

employee's right to change unions.[1] He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.

We are of opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed.

[File endorsement omitted]

[fol. 89]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15644

MARION S. FELTER, etc., Appellant,

v.

SOUTHERN PACIFIC COMPANY, a corporation, et al., Appellees.

Appeal from the United States District Court for the Northern District of California, Southern Division.

JUDGMENT—Filed and Entered May 12, 1958

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

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[1] See opinion of the Supreme Court in Pennsylvania Railroad Co. v. Rychlik, 352 U. S. 480. The case is not in point here except that it discusses the purposes of the Act. The Court concluded that the Act is intended to facilitate changes in unions, not to aid one union to raid another, but to cope with the problem peculiar to the railroad industry where employees may temporarily shift from craft to craft.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted]

[fol. 90]

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 91]

SUPREME COURT OF THE UNITED STATES

No. 269, October Term, 1958

MARION S. FELTER, on Behalf of Himself and Others Similarly Situated, Petitioner,

v.

SOUTHERN PACIFIC COMPANY, et al.

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioners,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Subject Index

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No.

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioners,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above cause May 12, 1958.

OPINIONS BELOW.

The opinion of Healy, J. for the Court of Appeals for the Ninth Circuit handed down May 12, 1958

(Appendix A, p. 1) is reported in .....F. 2d..... The opinion of Murphy, J. of the Federal District Court, Northern District of California, Southern Division, handed down May 24, 1957 (Appendix A, p. v) is reported in 155 F. Supp. 315.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 12, 1958 (Appendix A, p. xi). The jurisdiction of this court is invoked under 28 U.S.C., Section 1254(1), and Rule 19.1(b) of the Rules of the Supreme Court.

QUESTIONS PRESENTED.

1. Whether under the Railway Labor Act, as amended, (45 U.S.C., 151 *et seq.*) a railroad carrier and a labor union may negotiate restrictions in a check-off agreement limiting the statutory right of revocation of wage assignments for union dues by individual employees who have terminated membership in the union.

2. Whether under the Railway Labor Act, as amended, (45 U.S.C., 151 *et seq.*) individual employees, who have terminated membership in the union, may be barred by the terms of a check-off agreement between a carrier and a labor organization from exercising their statutory right to revoke their wage assignments except on a form which has been "reproduced and furnished" by the union.

STATUTE INVOLVED.

The pertinent provisions of the Railway Labor Act, as amended (45 U.S.C., Section 151 *et seq.*) are printed in Appendix B hereto, p. xii.

STATEMENT.

Petitioner and others similarly situated are employed by respondent Southern Pacific Company, hereinafter referred to as "carrier" (R. 4). They were formerly members of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "BRT" or "Union" (R. 6).

Effective August 1, 1955, the carrier and the BRT entered into a dues deduction agreement providing for deduction of BRT dues and other fees by the carrier upon written wage assignment authorizations executed by BRT members (R. 74-80). In compliance with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh), the wage assignments provided in part as follows (R. 78-79):

> "This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

More than a year after the expiration of their assignments, petitioner and others resigned and terminated their membership in the BRT (R. 17, 23, 36).

At the time of their resignations, these employees submitted written revocations of their wage assignments both to the carrier and to the BRT (R. 6, 20-21, 23-24). The written revocations submitted by the petitioner and others to the carrier and the BRT were identical to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79-80).

Although the revocations were in writing as required by the Railway Labor Act and were in the identical form of the revocation "form" attached to the check-off agreement, the carrier and the BRT refused to honor them on the ground that the provisions of the check-off agreement required revocations to be on forms "reproduced and furnished" by the BRT (R. 24-33, 36, 62-63). No contention was advanced that the revocations actually submitted in any way failed to comply with the provisions of the Railway Labor Act or were otherwise defective in any manner (R. 24-33, 36, 63).

The carrier advised that it would continue to deduct dues and pay them over to the BRT although petitioner and others had terminated their membership in the union (R. 7-12, 36, 63, 68).

This action was brought on behalf of petitioner and others similarly situated for appropriate injunctive relief and a determination that the dues deduction agreement, as interpreted and applied by the parties thereto, is invalid and a violation of the Railway Labor Act. The material allegations of the complaint were admitted in the answers filed by the BRT and by the carrier (R. 35-37, R. 62-64). The facts not

being in dispute, petitioner and the BRT moved for summary judgment (R. 46-47, 59-61).

The District Court was apparently of the opinion that it was not enough that the employee submit a revocation of his wage assignment in writing as provided by the Railway Labor Act. It held that a revocation required "some sort of orderly procedure" and that while the requirement that a form be secured from the BRT as a condition precedent to revocation was "a bit arbitrary", it was "no burden" and was "a reasonable compliance" with the Railway Labor Act (Appendix A, p. ix).

The Court of Appeals for the Ninth Circuit affirmed the District Court judgment (without discussing the issues) on the ground that it considered the trial court's appraisal of the case to be correct (Appendix B, p. iv).

Federal jurisdiction was conceded in the courts below. The action involves an alleged infringement by the defendant carrier and the defendant union of rights guaranteed individual employees by the Railway Labor Act. No administrative remedy exists since the controversy does not involve interpretation of the agreement and the parties thereto are in accord as to its interpretation and application. The action, therefore, is within the exclusive jurisdiction of the Federal District Court. *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768; *Mount v. Grand International Brotherhood of Locomotive Engineers,* 6 Cir., 226 F. 2d 604; *Brotherhood of Locomotive Firemen and Enginemen v. Mitchell,* 5 Cir., 190 F. 2d 308.

REASONS FOR ALLOWANCE OF WRIT.

1. The questions involved in this case are important in the administration of the Railway Labor Act, as amended.[1]

Section 2, Eleventh (b), of the Railway Labor Act, as amended, provides that an employee may revoke his wage assignment authorization after the expiration of one year from its execution. The only requirement in the statute is that the revocation be in writing.

Section 2, Eleventh (c), prohibits agreements providing for deduction and payment of dues to a labor organization other than that in which an employee holds membership.

The Railway Labor Act does not contemplate nor provide for negotiation as to the inclusion in check-off agreements of restrictions on the statutory right of employees to revoke dues assignments. If restrictions and conditions on this right are open to negotiation between rail carriers and rail unions then new controls on the bargaining rights of individual employees have been introduced in this field. A union naturally seeks perpetuation of its status. The carrier is not always disinterested and may prefer continuance of a particular union rather than to deal with some other bargaining representative whom its employees might

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[1]The only other appellate decision involving check-off agreements under the Railway Labor Act presents other issues. *Brotherhood of Railroad Trainmen et al. v. Switchmen's Union of North America, et al.*, 9 Cir., 253 F. 2d 81, presently pending before this court on petition for writ of certiorari. October Term, 1958, Docket No. 106.

choose. In devising such restrictions, temptation is strong for both carriers and unions to place as many obstacles as possible in the path of individual employees desiring revocation of dues assignments or a change in union representation.

Manifestly, Congress did not intend that an employer, under the guise of restriction in a check-off agreement, could continue to deduct "dues" and remit them to the union after receipt of a written revocation of the wage assignment more than a year after its execution and after the employee had terminated membership in the union. Any agreement negotiated between the employer and the union which purports to authorize such a result, as it did here, is in violation of the provisions of the Act.

The carrier and the BRT argued to the lower courts that they were entitled to negotiate "reasonable" restrictions on revocation of wage assignments for union dues. In view of the explicit and mandatory provisions of the Railway Labor Act it would appear that this argument should be made to Congress and not to the courts. Nevertheless, the respondents urged that the restriction in their check-off agreement, although construed by them to require an employee who had terminated BRT membership to obtain a revocation form printed by the BRT, was an appropriate restriction and "no burden" on the employee. Respondents argued, without any support in the record, that this restriction would promote orderly bookkeeping procedures, prevent forgeries, and permit the BRT to be "assured" that the

employee's revocation was "the result of a considered decision of the employee" and that he had not been the "victim of a raid" or "unduly influenced" or "high pressured".[2]

The issues presented by the contentions are important in the administration of the Railway Labor Act. The act does not authorize restrictions on the right of revocation of wage assignments, "reasonable" or otherwise. It is a departure from realism to say that it is "no burden" to an individual employee to comply with so-called "reasonable" restrictions on his right of revocation. Any restriction upon individual freedom guaranted by law is *per se* burdensome. To refuse his written revocation of a dues assignment unless he submits it on a form "reproduced and furnished" by the union poses an immediate obstacle to him. By such provisions the employee, who either has terminated his membership in the union or desires to do so, must solicit the grace of the union to furnish him a "form" reproduced by it in order to terminate payment of "dues". He is not free to exercise this statutory right without delay and without debating the wisdom of his decision with union officials from whom he wishes to sever all connections.

In the instant case, the BRT, although it had petitioner's revocation in proper form in its possession on the date provided by law for submission of such revocations to the carrier, refused to send it to the

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[2]BRT Brief, p. 11, certified separately as part of record for use in connection with this petition for certiorari.

carrier. Instead, petitioner was advised that he would have to wait at least another month to be released from his wage assignment, and then only if he obtained and made out another identical revocation form differing only in that it was printed by the BRT. While petitioner was thus forced to cool his heels at the whim of the BRT, further deductions were made from his wages and paid to the BRT although admittedly he had terminated his membership in that organization. While this was going on he was told that the BRT "hoped" that he would "reconsider" (R. 25). Not many employees under such conditions would persevere in a struggle against a powerful union and under normal conditions the BRT would succeed in such tactics.

It is an afterthought to suggest that "orderly bookkeeping procedures" justified refusal of a written revocation in the exact form prescribed by the agreement unless it was also submitted on a form which had been printed by and obtained from the BRT. This is effectively demonstrated by the conduct of the carrier in this case. The carrier, having received petitioner's written revocation along with others (in the identical "form" provided in the dues agreement) believed that they should be honored. Accordingly, the carrier's representative promptly wrote to the Secretary-Treasurer of the BRT local to that effect, saying (R. 28-29):

> "The attached Wage Assignment Revocations are being forwarded to you * * * as you will undoubtedly wish to show the same on the list to be furnished on or before the 5th day of April,

1957, as the names of employees from whose wages no further deductions are to be made."

The carrier saw no bookkeeping problem when it wrote to the BRT and only changed its position after protest by the BRT. Admittedly prior thereto the BRT had been notified by petitioner of the termination of his membership in the union (R. 7, 36, 24-28). The union knew that it was no longer entitled to collect dues from petitioner in view of the specific prohibitions in Section 2, Eleventh (c), of the Railway Labor Act. In addition, the union had in its possession not one, but two revocation forms executed by the petitioner. One of these forms had been submitted directly to the BRT (R. 23-24; 67). The other sent by petitioner to the carrier, was forwarded by the carrier to the BRT for inclusion on the list "of employees from whose wages no further deductions (were) to be made" (R. 28-29, 67). In this situation, the fact that these revocations were not on forms printed by the BRT is obviously totally unrelated to any administrative paper work required, and neither the carrier nor the BRT so claimed of record.

The further contention that the restriction on revocations in the dues agreement was justified to prevent "forgeries" is also an afterthought without support in the record. No claim was made that any forgery was involved in petitioner's termination of BRT membership. Presumably the carrier could detect a forged signature on a revocation form as easily as it could detect a forged endorsement on a pay check. Obviously, the matter of who printed the blank revo-

cation of dues form has nothing to do with detection of a forged revocation of a wage assignment.

The complete irrationality of the restriction makes plain that its real purpose was unlawfully to discourage revocations. The intent to delay and frustrate the employee's rights can be observed by this record, and by the admissions contained on page 11 of the BRT brief in the Court of Appeals. There the BRT stated that the restriction involved in its dues deduction agreement was designed to enable the BRT to make sure that the revocation

> "is the result of a considered decision by the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced."

The Railway Labor Act plainly does not contemplate that a union, with a financial interest and a desire for perpetuation, shall determine whether the employee's revocation represents his "considered decision". Congress did not intend that only such revocations are to be effective which, to the satisfaction of the union, are deemed executed after sufficient reflection. This intent to exercise a paternalistic role or veto power over an individual employee, who had terminated his membership, was reaffirmed by respondents in argument to the lower courts. Plainly, this is not what Congress had in mind when the provisions of the law here involved were adopted after it had been reiterated in the Congressional debates that it was *"wholly and entirely within the discretion of the employee"* as to whether his union dues were

to be deducted from his wages by an employer and paid over to a labor union.[3]

Congress was concerned with the preservation of rights and freedom of individual employees, and Senator Hill explained the effect of the bill as amended to members of the Senate in part as follows:

> "But no such (check-off) agreement is to be effective with respect to any individual employee unless first authorized in writing by him to the employer * * *. It is *wholly and entirely* within the discretion of the employee, and unless the employee sits down and writes on *a piece of paper* an authorization to the employer to turn dues, fees and assessments over to the labor organization and signs his name to the authorization there is no check-off as far as the employee is concerned. * * * Then he has a right, within a year, to revoke the assignment, *if he does not like the way it works, or if he wants to put an end to the deduction.*" (Italics added.)

The legislative history reflects that Congress specifically rejected proposals which would have left the operation of the check-off system subject to negotiation and the various provisions of collective bargaining agreements reached between carriers and unions. In enacting these amendments to the Railway Labor Act, Congress carefully protected the freedom of the individual and rejected proposals to leave the provisions of check-off agreements a matter of negotiation with all the variant restrictions which ingenuity might devise.

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[3] 96 Cong. Rec. 15735-15737.

The decisions of the lower courts in this case constitute an approval of negotiation of so-called "reasonable" restrictions and limitations on employee rights of revocation of wage assignments. Congress did not see fit to authorize such negotiation. If these decisions stand, nothing prevents negotiation of other obstacles to revocation in the name of "reasonableness" and "orderly procedure".

If the company and the union are entitled to engraft limitations on the employee's right of revocation of his wage assignment, such as the "form" of the revocation, then they can specify red paper, or 16-pound weight paper, or pica type, or whatever other conditions ingenuity may devise in the name of "orderly procedure". The substantial interests of the union lie in devising a maze of restrictions to discourage individual employees from dues revocations.

Judicial approval of power to negotiate restrictions and limitations on wage assignment revocations will not go unnoticed in the field of labor-management relations in the railroad industry. In view of the stake, other means inevitably will be sought to tighten check-off agreements for the sake of perpetuation of a union's representation rights over the craft and so as to exercise a veto on the individual employee's right of revocation and free selection of other bargaining representatives.

Congress did not intend that the amendments to the Railway Labor Act should be subject to litigation in the courts over the reasonableness or unreasonable-

ness of each limitation and restriction that might be sought to be negotiated in each check-off agreement between the various railroads of the United States and the numerous unions. To permit such a result as is present in the decisions of the lower court in this case can only mean that an endless chain of litigation is in prospect, contrary to the clear purpose of Congress as expressed in the plain language of the Act.

Congress foresaw this problem when it unequivocally and unconditionally granted the right of revocation to the individual employee. The negotiation of restrictions on the statutory right of revocation of wage assignment is a clear violation of the Railway Labor Act. It is submitted that the court should have enforced the commands and guarantees of individual liberty provided by the Railway Labor Act, and that it was in error in approving negotiation between rail carriers and unions which result in the imposition of so-called "reasonable" or any restrictions on revocations in check-off agreements which are not authorized by the Act.

The question of whether carriers and unions may negotiate restrictions on the employee's right of revocation of wage assignments for dues deduction is an important one in the administration of the Railway Labor Act. If the decisions below are permitted to stand the rights of the parties in this important field of labor law will remain in confusion. It is submitted that these decisions should be reviewed to the end that the rights of hundreds of thousands of railroad

employees subject to the Railway Labor Act may be clarified and protected and so that carriers and rail labor organizations may be instructed as to their duty under the law.

CONCLUSION.

For the foregoing reasons, the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit should be granted.

Dated, August 5, 1958.

Respectfully submitted,

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Of Counsel.

(Appendices A and B Follow.)

Appendix A

United States Court of Appeals
for the Ninth Circuit

Marion S. Felter, on behalf of himself and others similarly situated, Appellant, vs. Southern Pacific Company, a corporation; Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees.	No. 15,644 May 12, 1958

Appeal from the United States District Court for the Northern District of California, Southern Division

Before: Healy, Fee, and Barnes, Circuit Judges

Healy, Circuit Judge

The Railway Labor Act, 45 USCA §152, grants the right of collective bargaining, the right of employees freely to join a recognized union, etc. Subsection "Eleventh (b)" of §152, relevant here, provides, among other things, that any carrier and a labor or-

ganization shall be permitted "to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Appellees Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues check off agreement such as is contemplated by the above provision. As part of this agreement it was stipulated that "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization [union] without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company." The agreement contained provisions to the effect that deductions be made by the Company in accordance with lists of employees forwarded by the Union. It was further provided that thereafter two lists be furnished each month by the Union, one showing addi-

tional employees and one showing changes in amounts and the names of any employees for whom no further deductions should be made. The list was to "be accompanied by revocation of assignment forms signed by each employee so listed."

Appellant was employed as a conductor for Southern Pacific. He executed an assignment form provided by appellee Brotherhood, of which union he was then a member, and thereafter his union dues were regularly deducted. After the passage of more than a year he joined another union, the Order of Railway Conductors and Brakemen. [There was no impropriety in his joining this union inasmuch as the Railway Labor Act protects the employee's right to change unions if he desires to do so.] Appellant then obtained, filled out and signed a form to terminate his assignment of wages, this form being printed and furnished by his new union. In all material respects it was identical with the form as printed by his former union. The revocation form was sent to the Railroad Company, and the Company forwarded it to the Brotherhood. Appellee Brotherhood immediately wrote appellant, sending him a form provided by it and requesting that he fill it out and return it so that his assignment could be revoked by the list the union was then preparing for submission to the Railroad Company under the terms of the agreement.

Appellant never returned the proffered form to the Brotherhood. Accordingly, the Railroad Company did not terminate appellant's dues assignment and has continued to deduct dues for the Brotherhood, his former union.

There appears to be no dispute as regards the facts; and the only issue raised by appellant is whether the agreement, as interpreted by the appellees, to require a revocation to be on a form furnished by the union from which he had withdrawn, is violative of the Railway Labor Act. His argument is that the Act says a wage assignment "shall be revocable in writing" and that by requiring this writing to be on a particular form is a requirement which goes beyond what is permitted by the Act.

The trial judge was of opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the employee's right to change unions.[1] He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.

We are of opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed.

(Endorsed:) Opinion. Filed May 12, 1958.
Paul P. O'Brien, Clerk.

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[1]See opinion of the Supreme Court in Pennsylvania Railroad Co. v. Rychlik, 352 U. S. 480. The case is not in point here except that it discusses the purposes of the Act. The Court concluded that the Act is intended to facilitate changes in unions, not to aid one union to raid another, but to cope with the problem peculiar to the railroad industry where employees may temporarily shift from craft to craft.

In the United States District Court
Northern District of California
Southern Division

No. 36,348

Marion S. Felter, on behalf of himself and others similarly situated,
Plaintiff,
vs.
Southern Pacific Company, a corporation; Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, etc.,
Defendants.

ORDER

The cross motions for summary judgment which are before this court involve an interpretation of Section 2, Eleventh of the Railway Labor Act, 45 U.S.C. 152, Eleventh. The pertinent parts of this section read:

* * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that * * * all employees

shall become members of the labor organization representing their craft or class: * * *

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied * * * if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; * * * Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from an organization to another organization admitting to membership employees of a craft or class in any of said services.

Pursuant to the permission granted by the Act, defendants Southern Pacific Company and Brotherhood of Railroad Trainmen entered into a dues deduction agreement. The agreement provided that employee members of the Brotherhood could authorize deductions from their wages, or revoke such authorization, by completing prescribed forms to be reproduced and furnished by the Brotherhood. The Brotherhood was to notify the Company of these wage assignments and revocations of wage assignments by forwarding the completed forms, together with deduction lists, by the fifth day of each month. The assignments and revocations thus forwarded would be effective as of the first day of that month.

Plaintiff is employed as a conductor by the Southern Pacific Company. On or before February 1, 1956, plaintiff executed a wage assignment in accordance with the above agreement. After this assignment had been in effect for over a year, he decided to change his membership to the Order of Railway Conductors and Brakemen,[1] and he so notified the Brotherhood in a letter dated March 30, 1957 and received by the Brotherhood on April 2nd. At the same time, wage assignment revocation cards were furnished by the ORCB, completed by plaintiff and forwarded by the ORCB to the Brotherhood and the Company. These cards followed the form prescribed by the dues deduction agreement and in all material respects were identical with the cards furnished by the Brotherhood. The card sent to the Company was forwarded

[1]Formerly the Order of Railroad Conductors.

by the Company to the Brotherhood in a letter dated April 1, 1957, while the card which came directly from the ORCB was received by the Brotherhood on March 30th.

The Brotherhood replied to plaintiff's letter in a letter dated April 2nd, stating that the cards furnished by the ORCB were not acceptable because the dues deduction agreement provided that wage assignment revocation cards were to be reproduced and furnished by the Brotherhood. The letter went on to state that one of the Brotherhood's cards was enclosed and that as the wage assignment papers for April were to be forwarded to the Company the next morning, the new card would not be effective until May 1st.

Plaintiff did not complete the new card furnished by the Brotherhood; the Brotherhood did not forward plaintiff's name to the Company as one whose wage assignment was to be revoked; and the Company therefore continued to regard plaintiff's wage assignment as in full effect. This action was brought on behalf of plaintiff "and others similarly situated,"[2] seeking, together with appropriate injunctive relief, a determination that the action of the Brotherhood and the Southern Pacific Company in refusing to accept plaintiff's attempted revocation of wage assignment is a violation of plaintiff's rights under the Railway Labor Act.

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[2]There is some dispute as to whether there are in fact others similarly situated, but this question does not affect the outcome of the case.

Neither side presses this court for an interpretation of the dues deduction agreement. The sole question is whether the agreement as interpreted by the defendants is violative of the Railway Labor Act.

Although the proviso in Section 2, Eleventh (c) protecting the employee's right to change unions is in terms wholly unrestricted, it must be given a workable interpretation. A change in unions, and thus a change in dues deductions, obviously involves many bookkeeping and records changes on the railroad's part. It follows from this that employees cannot willy-nilly skip from one union to another, that some sort of orderly procedure has to be established. The dues deduction agreement between the Brotherhood and the Company sought to establish just such an orderly procedure. The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions.

The part of the withdrawal procedure which is complained of is the requirement that a revocation card must be secured from the Brotherhood. While this requirement may seem a bit arbitrary, it certainly is no burden. It is easily complied with, and is not appreciably more difficult than securing a revocation card from some other source. The only burden here would seem to be on the rival union, which perhaps cannot as easily recruit new members; and this

is not determinative of the issue. Pennsylvania Railroad Company et al. v. Rychlik, 352 U.S. 480 (1957).

Accordingly, this court holds that the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act. It is ordered that the temporary restraining order heretofore issued on April 12, 1957 be dissolved and that the action be dismissed.

Dated: May 24th, 1957.

/s/ Edward P. Murphy,
United States District Judge.

[Endorsed]: Filed May 24, 1957.

United States Court of Appeals
for the Ninth Circuit

No. 15,644

Marion S. Felter, etc.,
Appellant,

vs.

Southern Pacific Company, a corporation, et al.,
Appellees.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Filed and entered: May 12, 1958

Paul P. O'Brien, Clerk

Appendix B

Sections 2, Fourth and Eleventh of the Railway Labor Act, as amended, 45 U.S.C. §152 (Fourth and Eleventh).

"FOURTH. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: PROVIDED, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours with-

out loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

"ELEVENTH. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: PROVIDED, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment

to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: PROVIDED, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employees in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: PROVIDED, HOWEVER, That as to an employee in any

of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: PROVIDED, FURTHER, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provision in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

Attorneys for Petitioner.

CARROLL, DAVIS, BURDICK & MCDONOUGH,
Of Counsel.

Subject Index

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Statutes

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States District Court, Northern District of California, Southern Division, entered on the 24th day of May, 1957, is reported at 155 F. Supp. 315, and reprinted in the record (R. 65). The opinion of the Court of Appeals affirming the District Court is reported at 256 F.2d 429, and reprinted in the record (R. 85).

JURISDICTION.

The judgment of the Court of Appeals was entered on May 12, 1958. The petition for writ of certiorari was filed on August 11, 1958, and was granted on October 13, 1958. The jurisdiction of this court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED.

Section 2, Fourth, and Eleventh of the Railway Labor Act, Title 45 U.S.C., Section 152 (Fourth and Eleventh), are set forth in the appendix hereto.

QUESTIONS PRESENTED.

1. Whether under the Railway Labor Act, as amended (45 U.S.C., 151 et seq.), a railroad carrier and a labor union may negotiate restrictions in a check-off agreement limiting the statutory right of revocation of wage assignments for union dues by individual employees who have terminated membership in the union.

2. Whether under the Railway Labor Act, as amended (45 U.S.C., 151 et seq.), individual employees, who have terminated membership in the union, may be barred by the terms of a check-off agreement between a carrier and a labor organization from exercising their statutory right to revoke their wage assignments except on a form which has been "reproduced and furnished" by the union.

STATEMENT.

Petitioner and others similarly situated are employed by respondent Southern Pacific Company, hereinafter referred to as "carrier" (R. 4). They were formerly members of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "BRT" or "union" (R. 6).

Effective August 1, 1955, the carrier and the BRT entered into a dues deduction agreement providing for deduction of BRT dues and other fees by the carrier upon written wage assignment authorizations executed by BRT members (R. 74-80). On or before February 1, 1956, petitioner and others similarly situated executed wage assignments in the form prescribed by the dues deduction agreement (R. 6, 35, 62). In compliance with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh), the wage assignments provided in part as follows (R. 78-79):

> "This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

More than a year after the execution of their assignments, petitioner and others resigned and terminated their membership in the BRT (R. 17, 23, 36). At the time of their resignations, these employees submitted written revocations of their wage assignments both to the carrier and to the BRT (R. 6, 20-21,

23-24). The written revocations submitted by the petitioner and others to the carrier and the BRT were identical to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79-80).

Although the revocations were in writing as required by the Railway Labor Act and were in the identical form of the revocation "form" attached to the check-off agreement, the carrier and the BRT refused to honor them on the ground that the provisions of the check-off agreement required revocations to be on forms "reproduced and furnished" by the BRT (R. 24-33, 36, 62-63). No contention was advanced that the revocations actually submitted in any way failed to comply with the provisions of the Railway Labor Act or were otherwise defective in any manner (R. 24-33, 36, 63).

The carrier advised that it would continue to deduct dues and pay them over to the BRT although petitioner and others had terminated their membership in the union (R. 7-8, 36, 63, 68).

This action was brought on behalf of petitioner and others similarly situated for appropriate injunctive relief and a determination that the dues deduction agreement, as interpreted and applied by the parties thereto, is invalid and a violation of the Railway Labor Act. The material allegations of the complaint were admitted in the answers filed by the BRT and by the carrier (R. 35-37, 62-64). The facts not being in dispute, petitioner and the BRT moved for summary judgment (R. 46-47, 59-61).

The District Court was of the opinion that it was not enough that the employee submit a revocation of his wage assignment in writing as provided by the Railway Labor Act. It held that a revocation required "some sort of orderly procedure" and that while the requirement that a form be secured from the BRT as a condition precedent to revocation was "a bit arbitrary," it was "no burden" and was "a reasonable compliance" with the Railway Labor Act (R. 69).

The Court of Appeals for the Ninth Circuit affirmed the District Court judgment (without discussing the issues) on the ground that it considered the trial court's appraisal of the case to be correct. 256 F.2d 429, 430 (R. 87).

The action involves an alleged infringement by the respondent carrier and the respondent union of rights guaranteed individual employees by the Railway Labor Act. No administrative remedy exists since the controversy does not involve interpretation of the agreement and the parties thereto are in accord as to its interpretation and application. The action, therefore, is within the exclusive jurisdiction of the Federal District Court. *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768; *Mount v. Grand International Brotherhood of Locomotive Engineers*, 6 Cir., 226 F.2d 604; *Brotherhood of Locomotive Firemen and Enginemen v. Mitchell*, 5 Cir., 190 F.2d 308.

SUMMARY OF ARGUMENT.

I.

Section 2, Fourth of the Railway Labor Act contains an absolute ban on all deductions of dues and other monies from the wages of employees and payment thereof by a carrier to a labor organization. This section is modified by Section 2, Eleventh, to the extent of permitting such deductions only under the conditions therein specified.

Any exception to the prohibition of Section 2, Fourth of the Act such as is contained in Section 2, Eleventh, must be strictly construed within the terms of the permissive grant of Congress. Cf. *Louisville & Nashville Co. v. Mottley,* 219 U.S. 467, 479, 31 S. Ct. 265, 269 (1911); *Addison v. Holly Hill Fruit Products, Inc.,* 322 U.S. 607, 611, 64 S. Ct. 1215 (1944). Both the language of the statute and its legislative history establish that the policy of Congress in enacting Section 2, Eleventh was to reserve to the individual employee the absolute right and discretion to authorize or revoke a dues deduction assignment. Any attempt to condition or limit this right by agreement between carriers and unions is in excess of statutory authority.

II.

The deductions from petitioner's wages and payment thereof by the carrier to the union after petitioner had revoked his wage assignment authorization were involuntary contributions to a labor organization

by means of a check-off agreement. Such contributions constitute unlawful assistance to the union by the carrier in violation of Section 2, Fourth of the Act. *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 63 S. Ct. 1214 (1943).

III.

The enforcement of respondents' dues deduction agreement against petitioner for the period following his termination of membership in the BRT, when he owed it no "dues," was unlawful. As so applied and interpreted by the respondents, their dues deduction agreement is in direct violation of the terms of Section 2, Eleventh (c) of the Act.

IV.

Assuming that a carrier and a labor organization may prescribe the form of writing to be used in revoking a wage assignment, the record provides no justification for the carrier's refusal to honor petitioner's revocation, since he complied with the dues deduction agreement by executing a timely revocation in the exact form prescribed therein.

The complete irrationality of and absence of support in the record for respondents' grounds for refusing to recognize the revocation shows that the purported requirement of obtaining a form "reproduced and furnished" by the union is a purposeful contrivance to enable the union to harass, delay and ultimately discourage petitioner and others similarly

situated from revoking their wage assignments. By such action, control over petitioner and others is sought to be perpetuated in derogation of their right to full freedom of association and designation of their collective bargaining representatives, all in violation of the Act.

ARGUMENT.

I.

THE RAILWAY LABOR ACT PROHIBITS ALL DEDUCTION OF DUES FROM WAGES WHERE THE EMPLOYEE HAS REVOKED IN WRITING HIS AUTHORIZATION FOR SUCH DEDUCTION OR HAS TERMINATED HIS MEMBERSHIP IN THE ASSIGNEE LABOR ORGANIZATION.

A. Where Congress Has Created an Exception to an Otherwise Absolute Statutory Ban, the Exception Must Be Strictly Construed and May Neither Be Expanded nor Contracted by Agreement Between Private Parties.

Section 2, Fourth, of the Railway Labor Act, as amended (45 U.S.C. 152, Fourth), insofar as it deals with a check-off of dues,[1] provides:

> "It shall be unlawful for any carrier . . . to deduct from the wages of employees any dues, fees, assessments or other contributions payable to labor organizations."

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[1]The full text of Section 2, Fourth, and Eleventh, is set forth in the appendix.

Aware of past abuses of the check-off to coerce employees into lending financial support to carrier-dominated or favored unions,[2] Congress sought by means of the all-inclusive prohibitions of Section 2, Fourth, to return the choice of union membership and method of contribution thereto to the individual employee, unencumbered by any restraining agreements entered into by the carriers and labor organizations. Cf. *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592 (1937); *Brotherhood of Railroad Shop Crafts etc. v. Lowden*, 86 F.2d 458 (10th Cir., 1936), cert. denied 300 U.S. 659, 57 S. Ct. 435.

Section 2, Eleventh, of the Railway Labor Act (45 U.S.C. 152, Eleventh) excepts certain check-off agreements from the above proscription. Therefore, the sole authority for the instant agreement must be found, if at all, within the exceptions of that section. It is manifestly apparent from the express language of this provision of the law that the validity of a dues deduction revocation is conditioned only by the requirement that the assignment "shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

The provisions of the Act lend no authority whatever to the proposition that the employee can be limited to a particular form of notice of revocation or

[2] Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, 81st Cong., 2nd Sess. (1950) at pp. 19, 20.

that he can be restricted to procurement of a form from a particular union. Under the section, any written notice by the employee which contains a clear direction to revoke his wage assignment is in compliance with the Railway Labor Act. The Act is precise in requiring only that the revocation be written, thereby excluding oral revocations.[3] There is a clear distinction between such a limited authorization for check-off inclusion in a collective bargaining contract and a broad grant of authority to employers and unions permitting them within their discretion to lay down conditions as to how such check-offs and revocations thereof shall be accomplished.[4]

Despite the apparent lack of basis in the plain mandate of the provision, the carrier and the BRT persisted in their argument to the lower courts that they were entitled to negotiate between themselves "reasonable" restrictions on revocation of wage assignments. In view of the explicit and mandatory provisions regarding revocation, it would appear that this argument should be addressed to Congress, not to the courts. Since Congress did not see fit to authorize exceptions other than those listed, reasonable or otherwise, it is not the function of the courts to supply them. See *Louisville & Nashville Co. v. Mottley*, 219 U.S. 467, 469, 31 S. Ct. 265, 269 (1911), where this court declared:

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[3]Hearings cited in Footnote 2, supra, at 74.

[4]Cf. *Braddom v. Three Point Coal Co.*, 288 Ky. 734, 157 S.W. 2d 349 (1941); see also *Shine v. John Hancock Mut. Life Ins. Co.*, 76 R.I. 71, 68 A.2d 379 (1949), based on state statute.

> "The court cannot add an exception based on equitable grounds when Congress forbore to make such an exception."

See, also, *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 611, 64 S. Ct. 1215 (1944), where the court refused to dilute the word "all" to mean "substantially all." See *State of Utah v. Montgomery Ward & Co., Inc.*, 120 Utah 320, 233 P.2d 685 (1951), for a similar construction of a state statute held to conflict with congressional policy.

Also persuasive in sustaining petitioner's position in this regard are those cases arising under the sections of the Labor Management Relations Act which provide protection to individual employee choice as does Section 2, Eleventh (a) of the Railway Labor Act.[5] There, labor unions and employers sought by means of private legislation in collective bargaining to read further restrictions into the words "tender of dues and initiation fees," just as the BRT and the carrier in this case now attempt to engraft limitations on the words "revocable in writing." The courts were not, however, lulled into thinking that these "reasonable" restrictions were authorized by Congress. Thus, when unions and employers attempted to expand upon the meaning of the LMRA proviso by insisting that payment of dues be made only at a union meeting,[6]

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[5]Sections 8(a)(3) and 8(b)(2), Labor Management Relations Act, 1947, 29 U.S.C. §158.

[6]*NLRB v. Aluminum Wkrs. Int. Union*, 230 F.2d 515, 518 (7th Cir., 1956).

restricting the period of resignation from the union,[7] requiring initiation into membership as a condition precedent to paying dues,[8] or requiring attendance at union meetings,[9] the courts and the National Labor Relations Board rejected such attempts as being legally untenable and in excess of the congressional mandate, which required only the tender of dues and initiation fees.

Undoubtedly, each of the above restrictions could find justification on some basis of "orderly procedure," if that were the issue, but the plain fact is that they were firmly rejected as having no binding authorization in the law, without reference to the "orderly procedure" question. Yet this is the very position the carrier and the BRT would urge upon this court when they maintain that the limitation in their check-off agreement was a reasonable restriction and "no burden" on the employee. This argument misconceives the entire question since it assumes that any restrictions are permissible, if "reasonable."

Further, the argument ignores the realities of industrial life. As the cases cited immediately above demonstrate, any restriction upon individual freedom in excess of the statutory and constitutional limita-

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[7] *Marlin Rockwell Corp.*, 114 NLRB 553, 562 (1955): "Nor can it [the Board] interpret such employee action in terms of either a bargaining agreement language or that in an intraunion membership contract. For to do so would disregard the provisions of Section 7 of the Act."

[8] *United Brotherhood of Carpenters, etc., Local 824*, 115 NLRB 518 (1956).

[9] *Union Starch and Refining Co.*, 87 NLRB 779; enforced 186 F.2d 1008 (7th Cir., 1951); cert. denied 342 U.S. 815.

tions thereon is *per se* burdensome, and to refuse an employee's written revocation of a dues assignment unless it is submitted on a form "reproduced and furnished" by the union poses an immediate obstacle to his exercise of freedom of choice guaranteed to him by law. By such provisions, the employee, who either has already terminated his membership in the union or desires to do so, must solicit the grace of the union to furnish him a "form" reproduced by it in order to terminate the payment of his "dues." He is not free to exercise his statutory right of withdrawal without delay and without debating the wisdom of his decision with the very union officials from whom he wishes to sever all connections.

In the instant case, the BRT, although it had petitioner's revocation in proper form in its possession on the date provided for submission of such revocations to the carrier, refused to send it to the carrier. Instead, petitioner was advised that he would have to wait at least another month to be released from his wage assignment, and then only if he obtained and made out another identical revocation form differing only in that it was printed by the BRT (R. 25). While petitioner was thus forced to cool his heels at the whim of the BRT, further deductions were made from his wages and paid to the BRT, although admittedly he had terminated his membership in that organization and did not owe any "dues" to it. While these events were transpiring, he was told that the BRT "hoped" that he would "reconsider" (R. 25). By this conduct, the BRT exposes as its real purpose an effort to gain time for union persuasion and to

unlawfully discourage revocations, while at the same time requiring of the petitioner continued financial support to a union which is no longer authorized to receive it.[10]

It is well settled that enforcement of an unlawful check-off agreement interferes with the full freedom of association and the right to collective bargaining by employees. *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 63 S. Ct. 1214 (1943); *Safeway Stores, Inc.,* 111 NLRB 968 (1955); *The Englander Co., Inc.,* 114 NLRB 1034 (1955). Yet, by imposing further restrictions upon the expressed statutory exceptions, respondents attempt to accomplish by indirection that which is prohibited them directly, thereby coercing the petitioner into making contributions against his will.

To sustain the decision of the District Court is to amend the Railway Labor Act and engraft provisions thereon of an indefinite nature which Congress did not see fit to enact. This judicial grant of discretion to carriers and unions will inevitably be extended by whatever requirements they may subsequently devise in the name of orderly procedure, since a union's substantial interest lies in devising a maze of restrictions to discourage individual employees from dues revocations. The judicial expansion of such power will not go unnoticed. Just as in the National Labor Relations Board cases, supra,[11] other means will be sought to

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[10]Cf. *Fisher v. Stevens Coal Co.,* 143 Pa. 115, 17 A.2d 642 (1941); *Horn v. $1,950.00,* 184 Pa. 321, 132 A.2d 376 (1957).

[11]Footnotes 6, 7, 8 and 9, supra.

tighten union check-off agreements so as to exercise a veto on the individual employee's right of revocation and free selection of another collective bargaining representative.

B. The Legislative History of Section 2, Eleventh, Discloses No Authority for Carrier-Union Negotiation Restricting the Right of Revocation, but Rather Sustains Petitioner's Position That the Right Is Absolute in the Individual Employee.

As shown above, Section 2, Fourth, of the Railway Labor Act, as amended in 1934, was absolute in prohibiting all checking off of dues to any labor organization until 1951 when Congress adopted Section 2, Eleventh, expressly modifying Section 2, Fourth, and permitting the check-off of dues to the limited extent therein set forth. The legislative history of that section shows that Congress intended that the operation of the check-off system should be subject to the exclusive discretion and control of the individual employee rather than permitting it to be the subject of negotiation and regulation by agreement between carriers and labor organizations.

Noteworthy in this regard is the fact that the bills upon which hearings were held in Congress preceding enactment of Section 2, Eleventh,[12] enabled carriers and labor organizations to enter into collective

[12] S. 3295 as introduced is printed in Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, on S. 3295, p. 1, 81st Cong., 2nd Sess. (1950). H.R. 7789 as introduced is printed in Hearings Before the Committee on Interstate and Foreign Commerce, House of Representatives, on H.R. 7789, p. 1, 81st Cong., 2nd Sess. (1950).

bargaining agreements providing for the check-off system. However, contrary to the final legislative product, neither bill, as originally introduced, required that the individual employee give his assent to the deductions from his wages. Thus, there was a meaningful shift in legislative design in the final enactment of the legislation.

Most significant is the fact that the individual authorization was initially suggested by the national legislative representative of respondent BRT, Mr. Harry See. In the following exchange between See and Senator Donnell,[13] the meaning of written authorization and the scope of the authority given to unions and carriers in this connection is made eminently clear:

> "Sen. Donnell. I was very much interested in observing your view that the check-off provision should be predicated upon individual authorization by the employee.
>
> "I understand you to mean by that that you think it would be advisable that the bill . . . should not merely provide that the carrier and the union could make an agreement by which the carrier would be authorized to check off the dues and pay those dues over to the union, but that the right to make that check-off should be conditioned upon the authorization by the individual affected that the check-off might be made. . . .
>
> * * *
>
> "Do you think, Mr. See, that it would be advisable that this language in your amendment

[13] Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, U. S. Senate, on S. 3295, 81st Cong., 2nd Sess. (1950), at pp. 73-74.

'upon individual authorizations' should be defined a little more definitely as to what those authorizations should consist? That is to say, written authorizations or a written assignment, or whatever legal document might be necessary.

"Do you not think it would be well to have written in here that it should be done upon the written authorization of the employee rather than just the expression 'individual authorization'?

* * *

"That protects both parties. He knows what he signed presumably, and the company knows what it is that it has been authorized to deduct.

"Mr. See. That is true. I couldn't imagine any authorization for the purpose of that kind that wouldn't be written. But maybe it would be all right to put that language in the proposal.

"Sen Donnell. . . . I cannot imagine a railroad that would deduct anything from an employee's payroll unless it had it in writing. It would be better, would it not, in the statute itself to say that it should be in writing, and thereby both parties, the carrier would know it had the right to require it in writing, and the employee would know that he would be justified in agreeing that it should be in writing.

"Mr. See. I think that would be right."

It is of interest to note that when Senator Donnell spoke of "both parties", he explicitly referred to the carrier and the individual employee. Noticeable by its absence is the suggestion that the union has any part, as an assignee beneficiary of the dues deduction, in negotiating conditions upon the assignment of the employee's wages or the revocation thereof. Rather,

it is clearly envisioned that the only necessary parties to such a transaction would be the individual employee and the carrier. If it were not so, the bill as originally constituted would have sufficed without amendment.

Senator Taft and other members of the committee did not feel that the bill, as originally introduced, afforded adequate protection to the individual employees, such as was at that time contained in the Labor Management Relations Act.[14] Therefore, subsequent to the reporting of the bill and prior to debate on the matter, Senator Taft and Senator Hill incorporated the amendments to the bill which made the wage deductions dependent upon the individual authorizations of the employees rather than upon the terms of the collective bargaining agreements between the carriers and the labor organizations.[15] Senator Hill, manager of the bill, explained the effect of the bill as amended to members of the Senate who were concerned about the rights of the individual employees.[16]

> "The bill would also permit a carrier and a labor organization duly authorized to represent employees under the Act to enter into agreements providing for the check-off from wages of employees of periodic dues, initiation fees and assessments. But no such agreement is to be effective with respect to any individual employee

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[14] Supplemental Views of Senators Taft, Smith and Donnell S. Rep. No. 2262, 81st Cong., 2nd Sess., 1950. See also 96 Cong. Rec. 16267; Section 302(c)(4) LMRA, 1947, 29 U.S.C. §186.

[15] 96 Cong. Rec. 15735.

[16] 96 Cong. Rec. 15736-15737.

unless first authorized in writing by him to the employer.

"Mr. Lucas. Is it not a fact that it is *absolutely within the discretion of the employee* as to whether he requests the check-off?

"Mr. Hill. It is wholly and entirely within the discretion of the employee, and unless the employee sits down and *writes on a piece of paper* an authorization to the employer to turn dues, fees and assessments over to the labor organization and signs his name to the authorization, there is no check-off so far as the employee is concerned.

* * * *

"In other words, before a single penny can be deducted from the salary of the individual employee for the normal dues or assessments, he must give a written assignment to the company, so that it can pay that money to the union. *Then he has a right, within a year, to revoke that assignment if he does not like the way it works, or if he wants to put an end to the deduction.*" (Emphasis added.)

Similarly, when the bill reached the House its sponsors were careful to point out the protection afforded individual employees through the right of revocation.[17]

Finally, Vice President Barkley, in explaining the provisions prior to a final vote, reiterated the absolute right of the individual to revoke his assignment:[18]

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[17] See Comments of Mr. Wolverton, 96 Cong. Rec. 17051.

[18] 96 Cong. Rec. 16260.

> "It also provides that if the agreement is entered into, there may be a check-off provided the individual employee himself gives his consent in writing for the check-off, and *the employee has a right* at the end of one year's time, or at the termination of the particular agreement, *to withdraw his consent to any check-off.*" (Emphasis added.)

Thus, at each stage of the proceeding, from initial suggestion, to debate, to final vote, it was emphasized that the absolute right to authorize the deductions and to withdraw consent therefrom was to be retained in the individual employee alone. There is not one iota of authority for respondents' position that the beneficiary of the assignment, to wit, the union, can privately legislate by collective bargaining with the carrier the terms of the revocation or condition the withdrawal in any way.

Therefore, the purported requirement that as a condition precedent to revocation the petitioner first obtain a form "reproduced and furnished" by the BRT has no basis in the law and is void as a deterrent upon petitioner's exercise of his right of withdrawal.

C. Deductions Made After Receipt of the Individual Employee's Written Revocation are not Authorized by the Employee and are, therefore, Involuntary Deductions Constituting Unlawful Assistance to the Union by the Carrier.

The basis of petitioner's contentions in this area is that, apart from any other considerations, continued

deductions after the employee has given written notice of revocation to the employer constitute unlawful assistance to the union.

If the instant case were one involving the carrier's coercing the employees into lending financial support to the union by means of a compulsory signing of a dues deduction authorization, there can be no doubt that such action would be absolutely void. *Virginia Electric & Power Co. v. NLRB; Safeway Stores, Inc.; The Englander Co., Inc.*, supra. Petitioner submits that there is no material difference in result between the case of initially coerced contributions and the enforced continuance of dues deductions against the will of the assignor.

In both instances there occurs at some point in the proceedings, whether initially or subsequently, a time when consent to the deduction is not freely given; at that time the deduction cannot be regarded otherwise than as a forced contribution to the union. Any private agreement which fosters such a result prevents the employee from making a free and untrammelled disposition of his wages and is to that extent void.[19]

Petitioner's contention that the carrier in refusing to recognize the individual employee's revocation rendered unlawful support to the union is sustained by analogy in a recent Administrative Decision of the General Counsel of the National Labor Relations

[19]Cf. *Braddom v. Three Point Coal Co.*, Footnote 4, supra; *Chabot v. Prudential Ins. Co.*, 77 R.I. 396, 75 A.2d 317 (1950) based on explicit state statutes).

Board.[20] In that decision the evidence disclosed that certain employees had submitted to their employer timely and otherwise valid revocations of their dues check-off authorizations. The employer, however, refused to recognize the validity of the revocations, continued to deduct dues from the wages of the employees and transmitted the dues to the union. The General Counsel concluded that the company, by refusing to honor the check-off revocations submitted by the employees, interfered with and restrained the employees in the exercise of their rights to full freedom of association. The General Counsel further ruled:

> "Moreover, the continued deduction of dues after receipt of valid check-off revocations and the payment of such monies to the union, constituted unlawful support within the meaning of Section 8(a)(2)."

The salient points of coincidence between the above decision of the NLRB General Counsel and the instant case are apparent. It is undisputed in the instant case that the revocation was otherwise timely and in the prescribed form (R. 24), but the BRT, without attempting to disclose how it is able to interpose its will into an arrangement by which the individual directs the carrier to dispose of certain of his wages in a prescribed manner, combined with the carrier to cause the revocations to be rejected, with the only reason given by the BRT being:

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[20] Administrative Decision of the General Counsel of the NLRB, Case No. K-604, made public August 9, 1956.

"We do not recognize any revocation cards except those reproduced by our organization." (R. 30)

Drawing upon the analogy of the NLRB General Counsel's decision under a statute almost identical in language[21] and the same in purpose to Section 2, Fourth, of the Railway Labor Act, the continued deduction by the carrier of petitioner's dues constitutes unlawful support within the meaning of Section 2, Fourth.

D. When The Employee has not Only Revoked His Previous Authorization, but has Terminated His Membership in The Union, Any Further Deduction of Dues and Payment Thereof to That Union is a Direct Violation of Section 2, Eleventh(c) of the Railway Labor Act.

Section 2, Eleventh (c) is explicit in requiring that "no agreement made pursuant to subparagraph (b) [the authorization of dues deduction agreements] of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees or assessments payable to any labor organization other than that in which he holds membership."

Petitioner withdrew from the BRT at the time he revoked his dues assignment (R. 7, 23, 36). When respondents relied upon their agreement to justify their continued deductions from petitioner's wages thereafter, they were by that act applying and enforcing

[21] LMRA, Section 8(a); 29 U.S.C. §158(a).

an agreement which is expressly made unlawful by Section 2, Eleventh(c) of the Act. Moreover, a further provision of Section 2, Eleventh(c) accords freedom to petitioner to join another labor organization meeting the requirements of the law. To the extent that the dues deduction agreement between respondents places restrictions upon the free exercise of petitioner's decision to revoke his dues assignment and join another labor organization, that agreement is violative of Section 2, Eleventh(c).

One of the objectives of Section 2, Eleventh(c) has been held to be the protection of employees from "dual unionism in an industry with high job mobility." *Pennsylvania Ry. vs. Rychlik,* 352 U.S. 480. However, if the union is allowed to negotiate restrictions on the right of revocation which, as in the present case, operate so as to continue financial support to the union although the individual has terminated his affiliation with that union and joined another, dual unionism is then fostered by the agreement.

Further, Section 2, Eleventh(c) allows the deductions to be made *only* for "periodic dues, initiation fees, and assessments." Since petitioner is no longer a member of the union, he does not owe the union for any period thereafter, any amount as dues, initiation fees, and assessments. Therefore, the deductions after termination of membership are made for a purpose other than those specified in the statute and the continuation of deductions by the carrier is absolutely void notwithstanding any agreement between the carrier and the union to the contrary.

As was aptly stated in *Fisher v. Stevens Coal Co.*, 143 Pa. 115, 17 A.2d 642, 646 (1941):

> "Plaintiff having voluntarily withdrawn his membership in the United Mine Workers of America, at the time of earning the wages from which the one ($1) dollar dues was deducted by defendant company, plaintiff was no longer a member of the United Mine Workers of America and owed it no dues. United Mine Workers could not have collected from the plaintiff. The defendant company, agent of the plaintiff, having had notice of the withdrawal of plaintiff, had no legal right as such agent to deduct from plaintiff's wages dues which were not owing by him."

The instant agreement is likewise invalid as applied by the parties thereto in requiring contributions which were not due the union. It is to be noted that the *Fisher* case, *supra,* further supports petitioner's contention that the relationship formed by the check-off agreement is personal to the individual and the employer, a principal-agent relation, on which the union, only a beneficiary thereof, cannot impose conditions.

II.

ASSUMING THAT A CARRIER AND A LABOR ORGANIZATION MAY PRESCRIBE THE FORM OF WRITING TO BE USED IN REVOKING A WAGE ASSIGNMENT, THE RECORD PROVIDES NO LAWFUL JUSTIFICATION FOR RESPONDENTS' REFUSAL TO HONOR PETITIONER'S REVOCATION.

A. Petitioner has Complied with the "Dues Deduction Agreement" by Executing a Revocation "in the Form Agreed upon by the Parties."

It is an afterthought to suggest that "orderly bookkeeping procedures" justified refusal of petitioner's written revocation in the exact form prescribed by the agreement unless it was also submitted on a form which had been printed by and obtained from the BRT. This is effectively demonstrated by the conduct of the carrier in this case. The carrier, having received petitioner's written revocation along with others (in the identical form provided in the dues deduction agreement), believed that it should be honored. Accordingly, the carrier's representative promptly wrote to the Secretary-Treasurer of the BRT Local to that effect, saying:

> "The attached Wage Assignment Revocations are being forwarded to you . . . as you will undoubtedly wish to show the same on the list to be furnished on or before the 5th of April, 1957, as the names of employees from whose wages no further deductions are to be made." (R. 28-29.)

The carrier saw no bookkeeping problem when it wrote to the BRT and only changed its position after protest by the BRT. Prior thereto the BRT admit-

tedly had been notified by petitioner of the termination of his membership in the union (R. 7, 24, 36). In addition, the BRT had in its possession not one, but two revocation forms executed by petitioner. One of these forms had been submitted directly to the BRT (R. 23-24, 67), the other sent by petitioner to the carrier for inclusion on the list of "employees from whose wages no further deductions (were) to be made." (R. 28-29, 67.) In this situation, the fact that these revocations were not on forms printed by the BRT is obviously totally unrelated to any administrative paper work required, and neither the carrier nor the BRT so claimed of record. No attempt was made to show how yet a third form would elicit any further information not already in the union's or the carrier's possession, and, indeed, none can be made.

The dues deduction agreement itself merely prescribes that "revocation of the authorization shall be in the form agreed upon by the parties." (R. 74-75.) Despite this fact, however, the BRT persisted with its claim that under Section 1(c) of the dues deduction agreement, no revocation form was valid unless it had been "reproduced and furnished" by that organization. While it would appear that Section 1(c) was inserted only for the purpose of relieving the company of expenses and obligations in the administration of the check-off, the BRT insisted that this section of the agreement not only divested the company of any such responsibility it might have, but also granted to the BRT the exclusive control of the revocation procedure as against the individual employee

(R. 30). The company then agreed with this contention (R. 7, 12, 63).

The result is that the parties have construed the agreement not only as determining their responsibility *inter se,* but also as engrafting limitations on the statutory right of individual employees to submit written revocations of their wage assignments. This is a position that respondents have failed to show any basis for other than specious claims of orderly bookkeeping procedure and prevention of forgeries.

No claim was made in the record of this case that any forgery was involved in petitioner's termination of membership. Presumably the carrier could detect a forged signature on a revocation form as easily as it could detect a forged endorsement on a pay check. Obviously, the matter of who printed the blank revocation of dues forms has nothing to do with detection of a forged revocation and is just another unfounded attempt at justifying after the fact the unwarranted interference with what is under the law an individual decision.

B. The True Purpose of the Restriction Insisted upon by Respondents is to Discourage Revocations; the Restriction is, Therefore, Contrary to the Law and is not Binding upon the Petitioner.

The complete irrationality of the restriction makes plain that its real purpose was unlawfully to discourage revocations. The intent to delay and frustrate the employee's individual rights can be observed by this record, and by the admissions contained on page

11 of the BRT brief in the Court of Appeals.[22] Without attempting to show from whence such authority was derived, the BRT stated there that the restriction claimed to be a part of its dues deduction agreement was designed to enable the BRT to make sure that the revocation "is the result of a considered decision by the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced."

The Railway Labor Act plainly does not contemplate that a union with a financial interest and a desire for perpetuation shall determine whether the employee's revocation represents his "considered decision." Congress made it eminently clear by the prohibitions of Section 2, Fourth that individual rights to free association were not to be interfered with. *Virginian Ry. Co. v. Systems Federation No. 40, supra; Brotherhood of Railroad Shop Crafts, etc. v. Lowden, supra.* The carrier which assists a union in this endeavor is engaging in activity just as unlawful as those sponsoring a company-dominated union. Cf. *Virginia Electric & Power Co. v. NLRB, supra.*

If the restriction as applied to petitioner is contrary to the right of individual revocation as contained in Section 2, Eleventh, it cannot be maintained by respondents that the individual is bound by the unlawful negotiations of his collective bargaining rep-

[22] Certified by petitioner as part of the record on petition for certiorari herein; see also Brief of Respondent BRT in Opposition to Petition for Writ of Certiorari, p. 11.

resentative.[23] A restriction, the proponents of which can only justify on the basis of a veto power over the individual employee's right of revocation and free selection of other bargaining agents, has no basis in the law, and, therefore, it should be rejected.

If restrictions and conditions on the right of revocation of dues assignments are open to negotiation between rail carriers and rail unions, then new controls on the right of individual employees have been introduced in this field. A union naturally seeks perpetuation of its status. The carrier is not always disinterested and may prefer continuance of a particular union rather than to deal with some other bargaining representative whom its employees might choose. In devising such restrictions, temptation may be strong for both carriers and unions to place as many obstacles as possible in the path of the individual employees desiring revocation of dues assignments or a change in union representation.

If the courts are to pass in each case on the question of whether the particular restriction is "reasonable" or "unreasonable" and a "burden," an endless chain of litigation is in prospect. Congress did not intend the Railway Labor Act as an invitation to extensive litigation in the courts over the merits or demerits of every condition which ingenuity can devise in each check-off agreement. Congress sought only to protect the rights of the individual employee by providing a definite and simple procedure by which he might ex-

[23] Cf. *Shine v. John Hancock Mutual Life Ins. Co.; Braddom v. Three Point Coal Co., supra.*

press his individual desire to discontinue dues deductions and to change union membership without being bound to continue to pay dues to a union which has theretofore negotiated a check-off agreement with his employer. By the terms of the Act these rights may not be qualified or hedged about with restrictions by agreement between carriers and unions.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

Dated, San Francisco, California,
November 26, 1958.

Respectfully submitted,

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(Appendix Follows.)

Appendix

Section 2, Fourth and Eleventh of the Railway Labor Act, as amended, 45 U.S.C. §152 (Fourth and Eleventh).

"FOURTH. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments or other contributions: PROVIDED, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours

without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

"ELEVENTH. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor oganizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: PROVIDED, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment

to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: PROVIDED, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: PROVIDED, HOWEVER, That as to an employee in

any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: PROVIDED, FURTHER, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provision in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

I.

RESPONDENTS BY THEIR BRIEFS CONCEDE THAT THE RAILWAY LABOR ACT PROHIBITS A CARRIER FROM DEDUCTING AND A LABOR ORGANIZATION FROM RECEIVING DUES FROM THE WAGES OF AN EMPLOYEE NO LONGER A MEMBER OF THAT ORGANIZATION. RESPONDENTS' INTERPRETATION OF THEIR DUES DEDUCTION AGREEMENT ADMITTEDLY IMPOSED SUCH AN UNLAWFUL RESTRAINT UPON PETITIONER, AND THE AGREEMENT IS, THEREFORE, INVALID UNDER THE ACT.

In the proceedings in the trial court and prior thereto, both respondents insisted that they construed their check-off agreement as denying any validity to

the written revocations of dues deduction even though petitioner and others had terminated membership in the BRT. In their briefs to this Court, however, respondents now shift their position and assert for the first time that if petitioner and others had directly notified the carrier of their termination of membership in the BRT, deductions from their wages would have been immediately discontinued irrespective of their revocation notices (BRT Br. pp. 15, 16; Carrier Br. pp. 12, 13).

The BRT in its brief states (BRT Br. p. 15):

> "Had the petitioner notified the Southern Pacific Company of this change of unions no more dues deductions would have been made *regardless of a revocation,* for payment of wages to any other union than the one in which the employee is a member is forbidden by the Railway Labor Act."* [Citing and quoting 45 U.S.C. 152, Eleventh (c).]

The carrier in like vein now argues to this Court that it would have discontinued wage deductions if it had been provided with direct information that the petitioner had terminated his BRT membership (Carrier Br. 12-13).

Respondents have thus made a material admission of law bearing directly upon the first question submitted to this Court on certiorari. Moreover, the record of this case, which is without conflict, contains

*Italics where found in the quotations used in this Brief have been supplied.

respondents' further admissions that they had knowledge of petitioner's termination of membership in the BRT at the time they asserted that it was, nevertheless, their purpose to apply their dues deduction agreement so as to require a continuance of such deductions from petitioner's wages. It is precisely such an application of a dues deduction agreement, now admitted by the respondents, which makes the agreement invalid, as petitioner has pointed out to this Court in discussing the first question presented on certiorari (Pet. Br. pp. 23-25).

The complaint expressly alleged that plaintiff and others similarly situated had terminated membership in the BRT and had sent written revocations to both respondents (R. 7). The complaint further alleged in paragraph XII, which allegation both the carrier and the BRT admitted, that (R. 7, 36, 63)

> "The defendant carrier has advised plaintiff and others similarly situated that it will not honor such written revocations, due receipt of same having been acknowledged, but that the defendant carrier would continue to deduct from the wages of plaintiff and others similarly situated and pay to the defendant Brotherhood such sums as the Brotherhood indicated would be required to pay periodic dues, initiation fees and assessments owed by and charged against plaintiff and others similarly situated, *even though they were no longer members of the Brotherhood.*"

Both respondents thus unequivocally asserted of record that deductions from the wages of petitioner and others would be continued and paid to the BRT

as periodic dues of membership despite termination of membership in the BRT.

The BRT, while conceding that petitioner and others had terminated their membership in that organization, further admitted the allegations of paragraph XIII of the complaint that (R. 7, 36):

> "The defendant Brotherhood has advised the plaintiff and others similarly situated that it will not honor their notices of termination of membership in the Brotherhood, nor forward to the Carrier the revocation of assignments received by it from the plaintiff and others similarly situated . . . and will continue to collect sums from wages due plaintiff and others similarly situated."

The carrier likewise admitted the similar allegations of paragraph XIV of the complaint (R. 8, 63).

We thus find the BRT stating to this Court the inability, as a matter of law, of the carrier to deduct, and it as an organization to receive, dues from the wages of one no longer a member, and on the other hand admitting as a matter of record, as did the respondent carrier, that such deductions would be made from the wages of petitioner and others even though no longer members of the BRT. In the face of these admissions we find the BRT still protesting its willingness to forward petitioner's dues revocation notices promptly to the carrier if submitted on forms printed, furnished by and returned to the BRT in the first instance. It would seem that an organization that claims to assume all responsibility for record keeping with regard to dues, collection and revocations, would

be quick to notify the carrier of any termination of memberships in order to avoid collections of "dues" that it concedes are forbidden by law and which are deducted from the wages of individuals who do not owe them. It would further seem that the carrier, claiming to be interested in "orderly procedures," would be most anxious to avoid the deduction of "dues" from the wages of employees not owing such dues and diverting them to an organization not entitled to them by law. This inconsistency between respondents' admissions and their actual conduct points up once again the total absence of any justification in the law or the record for the position they assert.

The carrier argues at some length to this Court that it did not have knowledge of the termination of membership of petitioner and others in the BRT, albeit recognizing the likelihood of such possibility (Carrier Br. 12, 13). The carrier's position can more properly be analyzed by considering the fact that the carrier filed its answer to the petitioner's complaint in the trial court a week after the BRT had conceded such termination of membership as a matter of record (R. 35, 38, 62, 64). Notwithstanding such concession, the carrier answered the complaint and continued to assert throughout the proceedings below that it would continue to deduct dues and other sums from the wages of petitioner and others and pay such sums over to the Brotherhood "even though they were no longer members of the Brotherhood" (R. 7, 63).

It is apparent that respondents have belatedly acknowledged the lack of justification for the collection

of dues from the wages of an employee and the diversion of such funds to a union of which such employee is no longer a member.[1]

In an effort to find a tenable position, and disregarding the record, respondents now argue that the petitioner and others should have terminated the wage deductions by notifying the carrier of their termination of membership in the BRT. In assuming this new position, the respondents effectively abandon the claim that all notices must be transmitted through the BRT on forms prepared by and furnished by that organization, as a means of providing an "orderly procedure."

Both respondents profess to be gravely concerned over bookkeeping problems and forgeries when seeking to support the contention that "orderly procedure requires an employee to handle all revocation matters with and through the BRT," including the obtaining of revocation forms from and transmitting such revocations through the BRT. This concern vanishes entirely, however, when we find the respondents contending that the employee must assume complete responsibility for directly notifying the carrier of his termination of union membership at the cost of suffering continued deductions from his wages for "dues" payable to a union to which he no longer belongs and which takes no responsibility for notifying the carrier that he is not a member.

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[1]See *Switchmen's Union v. Southern Pacific Co.*, 253 F.2d 81 (C.A. 9, 1957), certiorari denied sub nom.; *Brotherhood of Railroad Trainmen v. Switchmen's Union of North America*, 358 U.S. 818, 3 L.Ed. 2d 60 (10/13/58).

It is respectfully submitted that in seeking to change their position before this Court the respondents have succeeded only in demonstrating the basic fallacy of their claim that the revocation procedure created in their dues deduction agreement is necessary to promote "orderly procedure."

II.

RESPONDENTS' BRIEFS DISCLOSE THAT THE REAL PURPOSE OF THE RESTRICTION IS TO CONSTRUCT A DEVICE DESIGNED TO FRUSTRATE PETITIONER AND OTHERS SIMILARLY SITUATED IN THE EXERCISE OF THEIR STATUTORY RIGHT OF REVOCATION.

The respondents' claim of "orderly procedure" has always been asserted in a vacuum without basis in the record. No pleading was made or evidence offered in support of a need for such procedure. The first reference to it appears by way of the following conclusional statement by the trial court (R. 69):

> "A change in unions, and thus a change in dues deduction, obviously involves many bookkeeping and record changes on the railroad's part."

The respondents have marshalled no other authority, but their briefs are replete with such statements as: "If each employee acted on his own, as petitioner contends, it is obvious that only confusion would result" (BRT Br. p. 9); "any other interpretation . . . would lead to constant controversy and confusion" (SP Br. p. 14); ". . . it would be impossible to keep accurate records" (BRT Br. p. 13); "it seems ex-

plicit in the wording of the statute that an employee is to furnish the . . . revocation of dues deductions through the labor organization . . . and not individually" (BRT Br. p. 13).[2]

A consideration of other contracts which apply a like provision of the Labor Management Relations Act (29 U.S.C. §302) demonstrates the fanciful character of respondents' arguments. Countless major companies and unions regularly execute agreements providing for dues deductions which provide for individual revocation without requiring the type of "orderly procedures" argued for by respondents; yet these organizations are not "obviously confused" nor can it be presumed that they find it "impossible to keep accurate records."

Representative of such agreements is that concluded between Consolidated Edison Co. and the Utility Workers Union. The applicable section provides, in part, that dues may be deducted for union members who sign "individual authorizations for such deductions which are on file with the Edison Company and have not been revoked or cancelled in writing and which specifically provide that they may be revoked or cancelled in writing by the signing individual at any time." (5 CCH Labor Law Reporter 59,263 at 59,271). The agreement quoted contains no require-

[2]See e.g. (BRT Br. p. 11) where respondent concludes, without citation, that "it was never contemplated that the individual could just write an authorization or revocation *on a piece of paper;*" but petitioner pointed out (Pet. Br. p. 19) that Senator Hill used that exact terminology in confirming the rights of individual employees under the law.

ments as to the form of revocation, who shall prepare it nor for the processing of any revocation by or through the union prior to its becoming effective by the simple act of filing it with the company. (See also *General Motors Corp.-United Auto Workers,* 5 CCH Labor Law Reporter 59,021 at 59,024-25; *Ford Motor Co.-United Auto Workers,* 5 CCH Labor Law Reporter 59,293 at 59,300; *Goodrich Rubber Co.-United Rubber Workers,* 5 CCH Labor Law Reporter 59,213 at 59,218; *Pittsburgh Plate Glass-Glass Blowers Union,* 5 CCH Labor Law Reporter, 59,495 at 59,499.)

These agreements are in operation with some of the largest employers in the United States. As these contracts demonstrate, the question before the court is not one of "orderly procedure" as opposed to no procedure, as respondents would have this court believe, but rather the question posed is whether the restrictions on revocation adopted by the carrier and BRT in this case are invalid because they are unauthorized by the Act and because such restrictions impinge on the individuals' statutory right to revoke the assignment at any time after one year has elapsed.

The real purpose for the provisions in respondents' dues deduction agreement, as interpreted by the parties thereto, is explained by the BRT in its brief to this Court (BRT Br. p. 11):

> "Sometimes, *as a practical matter,* an employee needs protection *against himself* as well as from outside undue influence, and the procedure set up in the agreement in question affords that protection by requiring both the authorization and revo-

cation of dues deductions to be made on the proper form obtainable from his own representative."

This bland statement by the BRT obviously has nothing to do with bookkeeping procedures. The "practical" implication of the statement is that a union may negotiate a dues deduction agreement which will enable it to exercise a domination over the employee. Implicit in this statement is the assumption that the employee is the subject of the union and should be insulated from the free exercise of his own independent judgment. In protecting the employee "against himself" the union, as a practical matter, seeks to perpetuate itself. It is from this type of paternalistic "protection" that the petitioner and others similarly situated are entitled to be relieved as an interference with rights provided by the Railway Labor Act.[3]

III.

PETITIONER IS NOT BOUND BY A CONTRACT PROVISION WHICH WAS NEGOTIATED IN EXCESS OF RESPONDENTS' AUTHORITY AND WHICH WAS CONTRARY TO THE RAILWAY LABOR ACT.

Respondents seek to avoid the consequences of the lack of legislative authorization for their action by contending that petitioner is nonetheless bound by the negotiations of the parties to the agreement (BRT

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[3]See *American Screw Machine Co.*, 122 NLRB No. 174, a recent decision under an analogous statute, where the NLRB struck down a similar effort by an employer and a union to interfere with the free choice of an employee in respect to withdrawal from a dues deduction arrangement.

Br. p. 5-7; SP Br. p. 14-15). Contrary to respondents' assertions, agreements which are violative of a valid statute or are against public policy are neither binding upon the individual nor are they capable of ratification. *Wallace Corp. v. NLRB*, 323 U.S. 248, 256; *Local No. 234 etc. v. Henley & Beckwith, Inc.*, (Fla. 1953) 66 So.2d 818; *Lewis v. Jackson & Squire, Inc.*, 86 F.Supp. 354 (W.D. Ark., 1949); cf. *Plumbers & Steamfitters v. Dillon*, 255 F.2d 820 (C.A. 9, 1958); *Britt v. Trailmobile*, 179 F.2d 569 (C.A. 6, 1950), *certiorari denied* 340 U.S. 20.

Therefore, when the respondents exceeded the congressional mandate by interpreting their agreement *inter se* so as to exercise a control over petitioner's right of revocation, the respondents could not thereby bind the petitioner or others similarly situated.

CONCLUSION.

The facts are undisputed that petitioner submitted his revocation of wage assignment in the form required by the parties and that petitioner had resigned from membership in the BRT. The insistence of respondents in these circumstances that petitioner obtain from the BRT another form exactly the same in content as his original revocation and differing only in the source of the printing thereof is not only "a bit arbitrary" (R. 69), but in addition enabled the respondents to pursue a course that respondent BRT itself admits is unlawful under Section 2, Eleventh(c) of the Railway Labor Act (BRT Br. 15).

The only justification sought for such course of conduct is that the restriction invoked enables the BRT to determine that "the revocation is the result of a considered decision by the employee" and to "protect" the employee "against himself." Far from being a justification, the purpose of the restriction is thus exposed as an unlawful interference with the right of revocation. The net result is that the respondent carrier is diverting funds from the wages of the petitioner under the guise of "dues" to an organization, the respondent BRT, of which petitioner admittedly is not a member and to which he owes no dues.

Petitioner respectfully submits that his assertion of his right of revocation in this cause, based as it is on the very wording of the statute, legislative history and the general course of decisions under analogous law, should be sustained and the decisions of the lower courts reversed.

Dated, San Francisco, California,
February 25, 1959.

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OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated, *Petitioner,*

v.

SOUTHERN PACIFIC COMPANY, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

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SUPPLEMENTAL BRIEF FOR PETITIONER

This Supplemental Brief is filed pursuant to Rule 41(5) of this Court to direct attention to the recent decision in *Brotherhood of Locomotive Firemen and Enginemen* v. *Northern Pacific Railway Company* (D.C. Minn.), 169 F. Supp. 411, reported March 16, 1959, after the filing of petitioner's Reply Brief.

The District Court holds in the case cited herein that a dues deduction agreement cannot authorize deduction of dues from wages after termination of membership in the labor organization to which the assignment authorization had been made by the employee. The decision further holds that an employee who terminates his membership in the union is entitled to immediate revocation of his dues assignment, even though less than a year has elapsed since it was made.

The opinion points out that changes in union membership is a common practice among railroad operating employees, and that any other interpretation of the Railway Labor Act would nullify the provisions of Section 2 Eleventh (c) thereof, which provides that neither the Act nor any dues deduction agreement shall prevent an employee from changing his union membership, and, further, that no agreement shall provide for deductions payable to any labor organization of which the employee is not a member.

Dated, Washington, D. C.
March 23, 1959

Respectfully submitted,

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Respondents herein, respectfully show:

QUESTION PRESENTED.

Pursuant to the permission granted by Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh), Respondents Southern Pacific Company and Brotherhood of Railroad Trainmen, a voluntary association, entered into a Dues Deduction Agreement. This Agreement provided that employee members of the Brotherhood of Railroad Trainmen, a voluntary association, could authorize deductions from their wages for dues, assessments, etc., or revoke such authorization by properly filling out forms in writing to be reproduced and furnished by the Brotherhood of Railroad Trainmen, a voluntary association. The Brotherhood of Railroad Trainmen, a voluntary association, was to notify the Southern Pacific Company of these wage deductions and revocations by forwarding the completed forms by the 5th of each month. The written assignments and written revocations thus forwarded would be effective as of the first day of that month.

The question presented is, then, whether such an agreement constitutes a violation of the Railway Labor Act by restricting the employee's right to change unions or to revoke his authorization to deduct dues and assessments from his wages, because the employee is required to revoke his authorization in writing on forms "reproduced" by the Brotherhood of Railroad Trainmen, a voluntary association.

STATUTE INVOLVED.

The statute involved is the Railway Labor Act as amended (45 U.S.C., Section 151, et seq.). The sections involved have been set forth in Appellees' Petition for Writ of Certiorari as Appendix "B" at Page XII.

STATEMENT.

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201 for the purpose of determining a question in actual controversy between Petitioner Felter, and others similarly situated, and Southern Pacific Company, a corporation, and Respondents Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, to-wit:

The question of the validity under the Railway Labor Act, 45 U.S.C. 152 (Eleventh), of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Southern Pacific Company and the Brotherhood of Railroad Trainmen, provides in effect that the Southern Pacific Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties) payable to the Southern Pacific Company by men-

bers thereof from "wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto * * *." This arrangement is commonly referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 74-80) provides (in part):

> "1. (a) Subject to the terms and conditions of this agreement the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Organization by members thereof from wages earned in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto, copy of which is attached as Attachment "A" and made a part hereof.
>
> (b) The signed authorization may, in accordance with its terms, be revoked in writing at any time after the expiration of one year from the date of its execution, or upon the termination of this agreement, or upon the termination of the rules and working conditions agreement between the parties, whichever occurs sooner. Revocation of the authorization shall be in the form agreed upon by the parties, copy of which is attached as Attachment "B" and made a part hereof.

(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.

2. Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employe is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a) A list showing any changes in the amounts to be deducted from the wages of employes with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employes from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employe so listed. Where no changes are to be made the list shall so state.

(b) A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employe so listed. Where there are no such additional employes the list shall so state."

ARGUMENT.

THE COURT OF APPEALS' DECISION IS CORRECT.

(a) There is no substantial question involved sufficient for the granting of a Writ of Certiorari by this Court.

The opinion of the Court of Appeals for the Ninth Circuit as set forth in Petitioners' Petition for a Writ of Certiorari as Appendix "A" and the Order of the United States District Court for the Northern District of California, Southern Division, as set forth at Page V of the Appendix to Petitioners' Petition for a Writ of Certiorari, both hold that there is nothing contained in the agreement under attack which, in any way, unreasonably or arbitrarily restricts the right of an employee not only to change his union affiliation, but to revoke any authorization he might have given for deduction of dues and assessments from his wages. The question here presented deals only with the procedural administration of Section 2, Eleventh (b) of the Railway Labor Act as amended. There is no substantial question involved as to the interpretation of the provisions here involved or with relation to any uncertainties in the application of such provisions. Certainly, no valid argument can be made that procedure for the orderly administration

of the provisions of the Act would constitute a restriction upon any of the rights given the employee by the provisions of that Act. There is nothing confusing in the terms of the agreement in question. It specifically provides that where a member who has signed a written authorization for the employer Southern Pacific Company to deduct from his earnings membership fees, etc., that a revocation of that authorization must be made upon a form "reproduced and furnished" by the Brotherhood of Railroad Trainmen which forms, in turn, are to be presented to the employer Southern Pacific Company through the Brotherhood of Railroad Trainmen. Certainly, such a requirement as far as revocation of a dues deduction authorization is concerned is valid under Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh). The exact language of the agreement is as follows:

> "(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished by the organization without cost to the company. The organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the company." (R. 75.)

Under the terms of this agreement there is nothing that in any way prohibits the employee from changing his union affiliation or from revoking his authorization for deductions from his wages. The only thing that is required under this agreement is that a simple procedure be followed that is outlined in the agreement, that is, he is to make out his authorization

upon a form supplied by the Brotherhood of Railroad Trainmen if the employee is a member of that union. This is a procedure worked out between the Southern Pacific Company and the Brotherhood of Railroad Trainmen to prevent confusion and to establish an orderly and systematic bookkeeping system. This was recognized by the District Court and also by the Court of Appeals.

> "The trial judge was of the opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the employee's right to change unions. He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.
>
> We are of the opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed."
>
> (See Opinion U.S. Court of Appeals, Appendix "A", Page IV Petition for Writ of Certiorari.)

There are two distinct requirements of the Dues Deduction Agreement with reference to revocation of a dues deduction authorization. One is that the revocation must be on forms "reproduced and furnished" by the Brotherhood of Railroad Trainmen and the other is that the forms must be delivered to the Southern Pacific Company through the Brotherhood

of Railroad Trainmen together with certified deduction lists on or before the 5th day of the month in which the change in deductions is to become operative (R. 75). The requirement that a revocation must be presented by the Brotherhood of Railroad Trainmen to the Southern Pacific Company is certainly a reasonable requirement for the orderly administration of the Dues Deduction Agreement. The Brotherhood of Railroad Trainmen was the representative of the Petitioner and it had the burden of insuring the Southern Pacific Company that revocations were proper and that the calculations in the amounts to be deducted were accurate which, in turn, would effect the responsibility of the Brotherhood of Railroad Trainmen for keeping accurate and up-to-date lists. Such a provision clearly serves the purpose of avoiding disputes and controversies that might arise between the Brotherhood of Railroad Trainmen and the Southern Pacific Company and is in accord therefore with the express purpose of the Railway Labor Act (45 U.S.C., Section 152, First). Unless the revocation is sent through the Brotherhood of Railroad Trainmen, there is no way that the Brotherhood of Railroad Trainmen would know when an employee had revoked or attempted to revoke his existing authorization for the deduction of his dues. Such a revocation without coming through the Brotherhood of Railroad Trainmen, if accepted by the Southern Pacific Company, would only lead to confusion and dispute. Consequently, the requirement that revocations be transmitted through the Brotherhood of Railroad Trainmen to the Southern Pacific Company in

no way interferes with the right of the employee to make such a revocation but simply sets up a reasonable and sensible procedure for the orderly administration of the Dues Deduction Agreement. It is just as simple and just as easy for the employee to send the revocation to the Brotherhood of Railroad Trainmen as it is to send it to the Southern Pacific Company and it is a lot less confusing and certainly prevents any misunderstanding or dispute. Certainly, no serious argument can be made that this in any way interferes with a member's right or privilege to change from one union to another. The only purpose of the provisions of the Dues Deduction Agreement requiring that a revocation be sent through the members' representative union, here, the Brotherhood of Railroad Trainmen, is to simplify the administration of the Dues Deduction Agreement, a purely procedural matter having nothing to do with the substantial rights of the appellant.

The Railway Labor Act (45 U.S.C., Section 152, Eleventh (b)) contains nothing with reference to the procedure to be followed in making deductions from wages except that the authorizations and revocations shall be in writing. As to how such authorizations and revocations are to be processed or what procedure is to be followed is not set out in the Act. Unless some orderly procedure is established by agreement, such as was done here, confusion and misunderstanding would result. If this confusion and misunderstanding is to be avoided or reduced to a minimum a procedure such as was established by the agreement here

must be followed. The procedure to be followed has been left to the parties when and if they "make agreements providing for the deduction." The requirement that revocation forms be "reproduced and furnished" by the Brotherhood of Railroad Trainmen serves a desirable objective. By requiring that the representative union of the employee, here the Brotherhood of Railroad Trainmen, furnish its own form for revocation, either in person or by mail, it can feel reasonably assured when the correct form is returned that it is the result of the decision of the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced. It is no more of a burden for a member to ask his union, here the Brotherhood of Railroad Trainmen, to provide him with a correct form than it would be for him to make a request to some other union. Here, the evidence shows that immediately upon receipt of a letter stating that appellant had resigned from membership a form for revocation of his dues deduction authorization was mailed without comment to appellant. He was no more restricted, coerced, or otherwise deterred from properly revoking his authorization for dues deductions than he was when he voluntarily followed the agreement and obtained the correct form from the Brotherhood of Railroad Trainmen at the time he made his original authorization. It would be perfectly logical for him to follow the same procedure he followed in authorizing dues deductions when he desired to revoke the authorization. Certainly, there is nothing unreasonable in requiring that he request the proper form from

the Brotherhood of Railroad Trainmen either by phone, or in writing, where there is no evidence that the Brotherhood of Railroad Trainmen in any way hesitated in supplying the proper form for revocation when requested. Had there been the slightest interference with the right of appellant to obtain a proper form to revoke his authorization, then there might have been some ground for claiming his right or privilege to change unions had been obstructed. It is difficult to see how requiring the appellant to follow the procedure set out in the Dues Deduction Agreement to request a correct form from the Brotherhood of Railroad Trainmen can constitute an unreasonable burden or any burden at all upon appellant's right to change unions since he obviously cannot change his union affiliations without informing the Brotherhood of Railroad Trainmen of his withdrawal and, in the withdrawal, he certainly can request a form for revocation of his dues deduction authorization.

Appellant's failure to have his revocation accepted by the Southern Pacific Company was due entirely to his wilful refusal to send the correct form to the Brotherhood of Railroad Trainmen.

> "* * * the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them."
>
> (See Opinion of Court of Appeals, Appendix Petitioner's Petition.)

Petitioner has argued that if required to obtain the proper form from the Brotherhood of Railroad Trainmen that he would be subjected to pressures not to revoke his wage assignment and, above all, not to change his affiliation. There is absolutely nothing, either in the record or in the Dues Deduction Agreement, to substantiate these charges. The Brotherhood of Railroad Trainmen had the proper forms available for use by the Petitioner and, as the evidence shows, the correct form was furnished and supplied to the appellant immediately upon receipt of his notification of withdrawal. The appellant did not see fit to return this correct form to the Brotherhood of Railroad Trainmen which was just as simple as sending his withdrawal to the Brotherhood of Railroad Trainmen which was accepted without comment. The correct form was mailed to appellant with no personal contact either having been made, requested, or required (R. 25). The facts refute Petitioner's contentions the Brotherhood of Railroad Trainmen would refuse to furnish the correct forms except under circumstances whereby the appellant would be subjected to pressures not to change his union affiliation. The only reason Petitioner failed to accomplish his objective of revoking his wage assignment was his wilful refusal to perform the simple act of filling out and returning the correct form which was actually furnished to him by the Brotherhood of Railroad Trainmen without even a formal request.

Petitioner, having been a member of the Brotherhood of Railroad Trainmen, was actually a party to

the Dues Deduction Agreement which Agreement he accepted and followed when it was convenient for him to do so. The Brotherhood of Railroad Trainmen was the chosen representative of the Petitioner. When agreements are entered into by the collective bargaining representative, they are binding upon the members of that bargaining organization.

> "Other parts of the Act expressly provided for the complete independence of employees in the matter of self-organization, and the right of employees to organize and bargain collectively through representatives of their own choosing, and conferred upon the majority of any class of employees the right to determine who should be the representatives thereof. Section 2 (Fourth) of the Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C.A. Secs. 151a and 152, Fourth. There can be no doubt that the action of a majority of employees in the selection of representatives *and the action of the representatives themselves so selected were intended to be binding upon the whole class of employees.*"
>
> *Atlantic Coast Line R. Co. v. Pope,* 119 F. 2d 39 at 43.

Petitioner was fully aware of the terms of the agreement entered into by and between the Brotherhood of Railroad Trainmen and the Southern Pacific Company because he obtained the correct form to make his original wage deduction authorization. As a matter of fact, Petitioner has never contended that he did not know that the agreement provided that the revocation forms were to be "reproduced and fur-

nished" by the Brotherhood of Railroad Trainmen. Petitioner knew the terms of the agreement. He knew he had to obtain the form from the Brotherhood of Railroad Trainmen. The Brotherhood of Railroad Trainmen voluntarily furnished him with the correct form and the only reason Petitioner failed to have the Southern Pacific Company stop deductions from his wages in accordance with his original authorization was his apparent deliberate wilful failure to follow the procedures of the contract which he ratified and with which he was familiar and pursuant to the terms of which he had originally authorized the deductions.

CONCLUSION.

In summing up, Respondents Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, contend that there being no procedural set-up in the Railway Labor Act for administering dues deductions that a Dues Deduction Agreement may provide a reasonable and orderly procedure to govern its operation so long as the privilege of an employee to change unions is free of unreasonable burdens. Both the Dues Deduction Agreement and the facts of this case show that the method of revocation as set out in the Dues Deduction Agreement is reasonable and serves the purpose of avoiding disputes in accordance with the express purpose of

the Railway Labor Act and does not constitute an unreasonable burden upon Petitioner's privilege of changing unions. There certainly can be nothing unreasonable about requiring the member of a union to conduct his business through the union in an orderly manner. Therefore, it is respectfully submitted that the opinion of the United States Court of Appeals for the Ninth Circuit is correct.

And, for the reasons expressed, it is submitted that Petitioner's request for issuance of the Writ of Certiorari to review the judgment of the Court of Appeals for the Ninth Circuit should be denied.

Dated, Oakland, California,
August 27, 1958.

Respectfully submitted,
CLIFTON HILDEBRAND,
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D. W. BROBST,
Of Counsel.

In the Supreme Court of the United States

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MARION S. PELTIER, on behalf of himself and others similarly situated,

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vs.

SOUTHERN PACIFIC COMPANY, a corporation, BROTHERHOOD OF RAILROAD TRAINMEN, et al.,

Respondents.

Brief for Respondent Southern Pacific Company

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Brief for Respondent Southern Pacific Company

QUESTIONS PRESENTED

The questions presented for review are set forth in the Brief for Petitioner. The first question is more accurately stated as follows:

Whether the procedure established by the Dues Deduction Agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right to change unions under the Railway Labor Act.

STATEMENT OF THE CASE

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201, for the purpose of determining a question in actual controversy between petitioner, Marion S. Felter and others similarly situated, and respondents, Southern Pacific Company (hereinafter referred to as the "Carrier") and Brotherhood of Railroad Trainmen (hereinafter referred to as "B.R.T."), to-wit, the question of the validity under the Railway Labor Act (45 U.S.C. 152, Eleventh) of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Carrier and the B.R.T., provides in substance that the Carrier shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the B.R.T. by members thereof from their wages, "upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto * * *." This arrangement is commonly (and hereinafter) referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 75-76) further provides (in part):

> "[1] (c). Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. *The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.*
>
> 2. *Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employe is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to*

the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company.

Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a). A list showing any changes in the amounts to be deducted from the wages of employes with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; *also the names of employes from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employe so listed.* Where no changes are to be made the list shall so state.

(b). A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employe so listed. Where there are no such additional employes the list shall so state." (Emphasis supplied.)

The Carrier has scrupulously complied with the terms of the Dues Deduction Agreement (R. 63-64).

Petitioner and others similarly situated executed wage assignments in accordance with the Dues Deduction Agreement (R. 67). Thereafter, petitioner and others submitted revocations of their wage assignments to the Carrier and the B.R.T. (R. 67) which were neither reproduced nor furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 24, 28, 69, 74-75). Those revocations which were submitted to the Carrier were forwarded to the B.R.T. to be processed in accordance with the Dues Deduction

Agreement (R. 28-30). Petitioner was promptly notified by the B.R.T. that the revocation of assignment which he had submitted could not be accepted because it had not been reproduced and furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 25). The B.R.T. then mailed to Petitioner a form which would be accepted by the B.R.T. (R. 25). Petitioner never returned the form furnished to him by the B.R.T. (R. 25-26).

On April 12, 1957, petitioner filed complaint for declaratory and injunctive relief in the United States District Court (R. 3-10). Respondents B.R.T. and Southern Pacific Company filed answers (R. 35, 62). There being no substantial dispute as to the facts, the B.R.T. and the petitioner moved for summary judgment or dismissal (R. 46-47, 59-61). On May 24, 1957, United States District Judge Edward P. Murphy (R. 65-70) held that "the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act", and dissolved the temporary restraining order and dismissed the action. The action of the District Court was affirmed by the Court of Appeals for the Ninth Circuit (R. 85-87). Petitioner has presented this matter to this Court for review.

SUMMARY OF ARGUMENT

In 1951 Congress enacted Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh) which provides that notwithstanding any other provisions of the Act carriers and railway labor organizations shall be permitted to make agreements providing for the deduction of dues upon written authorizations of the employees. Such agreements may provide for the payment of the dues so deducted to the organization representing the craft of employees so

authorizing the deduction in writing. The amendment does not specify what procedure for authorization or revocation of dues deductions shall be contained in the agreements. It does specify that the authorizations shall be revocable in writing after one year.

At the request of the B.R.T. respondent Carrier negotiated the same type of dues deduction agreement which it has with many other labor organizations. This agreement provides for the procurement [and execution] of authorization and revocation forms by the employee from the B.R.T. and the submission of the executed forms to the Carrier through that organization. In Section 2 (R. 75) the agreement provides the procedure by which the Carrier is to place the authorizations in effect, make continuing deductions and terminate deductions. Revocations submitted by employees are to accompany deduction lists certified by the B.R.T. and furnished to the Carrier's Division Superintendent on or before the fifth day of each month. The agreement requires that these certified lists shall show the names of employees from whose wages no further deductions are to be made, *which shall be accompanied by revocation of assignment forms signed by each employee so listed* (R. 76).

Petitioner authorized the deduction of dues from his wages in writing, and the authorization was submitted in the manner provided above. After the expiration of one year he decided to change organizations, which is his prerogative under Section 2, Eleventh (c) of the Act. He submitted his revocation of dues deduction assignment to the officers of the new organization, who forwarded it to the Carrier. In view of the agreement procedure the Carrier submitted the letter to the B.R.T. The latter organization, having received a letter from petitioner which advised that

he desired to revoke his dues deduction authorization, promptly mailed to him a revocation ("A-2") card, to be filled out, returned to the B.R.T. and forwarded to the Carrier in the prescribed manner (R. 25). Petitioner did not elect to follow this procedure; but instead he brought the instant suit, contending that the procedure violated his rights under the Act.

It is respondent Carrier's position that Congress intended that an orderly procedure such as this should be established for the handling contemplated by the dues deduction agreements which it authorized; that the necessity of such a procedure is obvious, because it enables the parties to the agreement and the employees to reconcile their records and resolve any disputes over improper deductions; that the procedure is not burdensome, particularly in light of the large number of employees and transactions involved; and that petitioner is not in a position to complain that the agreement has been violated, or that he has been deprived of his rights under the Act, because he has not fulfilled the agreed method of revocation, which simply involves the completion of a form which was sent to him for that purpose by the B.R.T. (R. 25). If petitioner had been deprived of his right to revoke his assignment of dues after the execution and return of this form to the B.R.T., he would have been in a different position.

ARGUMENT

I. The Railway Labor Act provides for the negotiation of agreements for the deduction of dues from wages. The Act does not prohibit the inclusion of a reasonable method of effecting revocations.

In 1951 Congress amended the Railway Labor Act by the addition of Section 2, Eleventh (45 U.S.C. 152 Eleventh), which declares that "*notwithstanding any other pro-*

visions of this Act * * * any carrier * * * and a labor organization * * * shall be permitted * * * (b) to make agreements providing for the deduction by such carrier * * * from the wages of its * * * employees in a craft or class and payment to the labor organization representing the craft * * * of any periodic dues * * * provided, that no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues * * * which shall be revocable in writing after the expiration of one year * * *". (Emphasis supplied.) (Petitioner's brief, Appendix, pp. i-iv)

Petitioner relies upon Section 2, Fourth of the Act (45 U.S.C. 152 Fourth), which had, prior to 1951, banned the deduction of dues from the wages of employees. It is apparent from the language of Section 2, Eleventh (45 U.S.C. 152 Eleventh), that Congress was of the view that conditions in the railroad industry had changed to the extent that it was in the public interest to authorize *agreements* for the deduction of dues, upon the written authorization of employees pursuant to such agreements. It is obvious that some form of reasonable and orderly procedure must be established if confusion and misunderstandings are to be avoided or, at least, reduced to an absolute minimum. What the procedure shall be has been left to the parties when and if they "make agreements providing for the deduction".

There are two separate requirements of the Dues Deduction Agreement here involved. One is that the revocation must be on forms "reproduced and furnished" by the B.R.T., and the other is that the forms must be delivered to the Carrier through the B.R.T., together with certified deduction lists on or before the 5th day of the month in which

the change in deductions is to become operative (R. 75). Clearly, the respondent Carrier is vitally concerned with the latter requirement.

The Carrier receives no benefit whatever from the Dues Deduction Agreement. Such an agreement is solely for the benefit of the Organization and those employees who desire to avoid the inconvenience of making their own individual payments to the Organization of which they are members. Under such circumstances, it is only proper that the organization, the representative of the employee, should have the burden of insuring that revocations are not forgeries, take the responsibility for calculating the amounts to be deducted, be responsible for keeping accurate and up-to-date lists and do such other bookkeeping as does not necessarily have to be performed by the Carrier. In fact, such an arrangement clearly serves the purpose of avoiding disputes and controversies between the Organization and the Carrier and is therefore in accord with the express purpose of the Railway Labor Act (45 U.S.C. § 152, First). Moreover, there is no requirement in the Railway Labor Act that the Carrier enter into a Dues Deduction Agreement, and it would undoubtedly be justified in refusing to make such an agreement, from which it derives absolutely no benefit, without the establishment of an orderly procedure. Unless the Act contemplated the establishment of such an orderly procedure, it would seem unlikely that any Carrier would enter into a Dues Deduction Agreement and that portion of the statute allowing such agreements would become a nullity. Certainly Congress had no such intent.

It is clearly necessary that both the B.R.T. and the Carrier know when an employee revokes his existing authorization for the deduction of his dues, and the Organization is obviously the logical party to receive and determine the

validity of any revocation in the first instance. The requirement that revocations be transmitted to the Carrier through the B.R.T. in no way interferes with the right of the employee to make such revocations, and does not constitute a burden of any kind upon the employee. It is just as easy for the employee to send the revocation to the B.R.T. as to send it to the Carrier.

II. The procedure established by the Dues Deduction Agreement does not place such an unreasonable burden on employees who wish to withdraw from the Brotherhood as to constitute a violation of an employee's right to change unions under the Railway Labor Act.

Petitioner assumes in his brief that he has been deprived of the right to revoke his assignment of dues because he is required by the agreement to furnish his revocation through the B.R.T. on the form which they are bound to furnish to him upon his request (petitioner's brief, page 29). He contends also that this procedure constitutes an unreasonable burden upon his right to revoke. Neither of these propositions is tenable, in view of the fact that Congress has specifically declared that dues deduction agreements may be negotiated, so long as they provide a means of revocation by the employees after the expiration of one year. The employee's right to submit an effective revocation is not conditioned in any way by the agreement, except insofar as the agreement spells out the procedure adopted for its presentation. Such procedure is necessary to preclude disputes between the parties to the agreement over the proper deduction of dues. This procedure is not an unreasonable burden upon the employees, because they have the absolute right to revoke by obtaining the agreed form, executing it and presenting it to the B.R.T. This involves no more time or effort than is required to notify the B.R.T.

that the employee wishes to withdraw membership in that organization, and can easily be accomplished at the same time. Notwithstanding petitioner's argument, any persuasion by the B.R.T. of the employee to remain a member would be addressed to the withdrawal from membership, and not singularly to the revocation of the authorization to deduct dues which accompanies the former. There is no showing in this record of any such pressure, which the petitioner implies in his brief (petitioner's brief, page 13).

There is not, nor can there be, any dispute concerning interpretation of the Dues Deduction Agreement. The agreement is clear and explicit. It provides that revocations of wage assignments must be on forms "reproduced and furnished" by the B.R.T. and that the forms must be delivered to the Carrier through the B.R.T. (R. 75). The Court is concerned herein only with the question of whether these requirements are valid under Section 2, Eleventh of the Railway Labor Act (45 U.S.C. § 152, Eleventh).

Petitioner, in his brief, points out that the Railway Labor Act provides that employees shall be free of "interference, influence or coercion" in their choice of representatives (45 U.S.C. § 152, Third). Moreover, the Act also provides that nothing "shall prevent an employee from changing membership from one organization to another organization" (45 U.S.C. § 152, Eleventh (c)). However, the statement of petitioner that the provisions of the Dues Deduction Agreement here under consideration constitute limitations not authorized by the Railway Labor Act, and "poses an immediate obstacle to his exercise of freedom of choice guaranteed to him by law", is erroneous (Petitioner's Brief, pp. 9, 13). There is absolutely nothing in the Railway Labor Act or in any other Act of Congress to indicate that the design of the Act or the intent of Congress was to insure that an

employee would have absolute freedom to skip from one union to another. The purpose of the Railway Labor Act in insuring that certain employees may change unions has been clearly stated by this Court in *Pennsylvania R.R. v. Rychlik*, 352 U.S. 480 (1957) as follows (p. 492):

> "It thus becomes clear that the only purpose of Section 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts. The aim of the Section, which was drafted by the established unions themselves, quite evidently was not to benefit rising new unions by permitting them to recruit members among employees who are represented by another labor organization. Nor was it intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility. This is made particularly clear when the provision is taken in the context of American labor relations in general. The National Labor Relations Act contains no parallel to subsection (c), and employees under a union-shop contract governed by that Act must join and maintain membership in the union designated as the bargaining representative or suffer discharge. Similarly, subsection (c) does not apply to *nonoperating employees* where the problem of seasonal intercraft movement does not exist. Railroad employees such as clerks working under a union-shop contract have no right at all to join a union other than the bargaining representative. In other words, once a union has lawfully established itself for a period of time as the authorized bargaining representative of the employees under a union-shop contract, Congress has never deemed it to be a 'right' of employees to choose between membership in it and another competing union. If Congress intended to confer such a right, it would scarcely have

> denied the right to nonoperating employees of the railroads or industrial employees under the National Labor Relations Act. The purpose of Section 2, Eleventh (c) was simply to solve the problem of inter-craft mobility under railroad union-shop contracts."

Thus, while the petitioner in this case does have the privilege of changing unions, it cannot be contended that it was the intent of Congress to free the privilege of all restrictions no matter how reasonable they might be. Therefore, as correctly stated by the trial court (R. 69):

> "The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions."

Petitioner argues that he had withdrawn from the B.R.T. previous to the mailing of the letter from the Order of Railway Conductors and Brakemen containing his intention to revoke his written authorization to deduct dues (R. 20-21). It is contended that any further deductions and payment to the B.R.T. would violate Section 2, Eleventh (c) of the Railway Labor Act (45 U.S.C. 152 Eleventh (c)). To the contrary, the letter does not mention any change of membership, but could equally support the conclusion on the part of the Carrier that the writer of the letter was attempting to persuade petitioner to make the change. The record does not show that the Carrier had any knowledge of petitioner's claimed new affiliation. Since it did not have such information, the petitioner's allegation in this respect (R. 7) was denied by respondent Carrier in its Answer filed in the District Court (R. 62). It is true that Carrier might assume, from the fact that petitioner proposed to revoke his dues-deductions, that he likewise proposed to

change his membership, particularly because of the fact that the writer of the letter was an organization other than the B.R.T. But it is also possible that petitioner desired to pay his dues other than by automatic deductions from his wages. Furthermore it was probable that petitioner intended to change unions when his revocation of dues deductions became effective, which would be the date when he complied with the procedure in the agreement. Petitioner's refusal to utilize this simple procedure would be the sole basis for any such discrepancy.

III. Where the petitioner has not attempted to present his revocation in accordance with the agreement pursuant to which he executed his dues deduction assignment he cannot complain that his revocation has not been honored.

A. Petitioner's failure to have his revocation accepted was due entirely to his own refusal to send in the correct form to the B.R.T.

In his brief, petitioner contends at length that if required to obtain the proper form from the B.R.T., he may be subjected to pressures not to revoke his wage assignment and above all not to change his union affiliation. However, there is absolutely nothing either in the record or in the Dues Deduction Agreement to give substance to these alleged fears. Respondent Southern Pacific Company concedes that if the B.R.T. refused or failed to furnish the correct and acceptable revocation forms upon request of the petitioner, or if the B.R.T. refused to furnish such forms, unless and until the petitioner submitted to efforts to persuade him not to change his union affiliation, the petitioner would be subjected to unreasonable burdens and would be entitled to effect a revocation of his wage assignment by other means.

However, such conduct, besides being an unreasonable burden upon the right of petitioner to change unions, would also constitute a violation of the Dues Deduction Agreement

itself. Clearly, the Dues Deduction Agreement contemplates that the B.R.T. shall have the acceptable forms in readiness and that the B.R.T. will furnish them promptly to an employee who wishes to revoke his wage assignment. Moreover, the record clearly demonstrates that the B.R.T. *did* have such forms available and *did* furnish the forms promptly to employees who requested them, including the petitioner without dilatory tactics of any kind. In fact, the record clearly shows that as soon as the B.R.T. became aware of the fact that petitioner wished to revoke his wage assignment, the B.R.T. sent him the correct form to fill out even though he had never requested that the correct form be sent to him. Moreover, this form was mailed to him and no personal contact with the B.R.T. was requested or required (R. 25). Thus, despite all of petitioner's protestations that the B.R.T. could refuse to furnish the forms or might refuse to furnish such forms except under circumstances wherein he could be subjected to pressures not to change his union affiliation, the fact is that none of these contentions are supported by either the Dues Deduction Agreement itself, or by the actual facts. The only reason petitioner failed to accomplish his objective, of revoking his wage assignment, was his refusal to fill out and return the correct form, which was actually furnished to him by the B.R.T.

B. Petitioner should not be allowed to repudiate the contract of which he has taken advantage and which was made on his behalf by his collective bargaining representative.

Petitioner in this case is in the position of now attempting to disregard a contract which he has accepted and followed so long as he considered it convenient to do so. The B.R.T. in entering into the Dues Deduction Agreement acted as the chosen craft representative of the petitioner and of

his fellow employees (brakemen). Agreements made by the authorized collective bargaining representative are binding upon the employees for whom it speaks *Atlantic Coast Line R.R. v. Pope*, 119 F.2d 39 (4th Cir., 1941). Even if this were not true, petitioner, by authorizing deductions from his wages pursuant to the agreement, ratified and accepted the terms thereof. Petitioner knew the terms of the agreement because he obtained the correct form to make his original wage deduction authorization; he has never contended that he did not know that the agreement provided that the revocation forms were to be "reproduced and furnished" by the B.R.T. In other words, petitioner was familiar with the agreement; he knew in particular that he had to obtain both the deduction and the revocation forms from the B.R.T.; and the B.R.T. voluntarily furnished him with the correct revocation form. Thus the only reason petitioner failed to have the Carrier cease making the deductions from his wages which he had previously authorized was his apparently deliberate refusal to follow the terms of the contract with which he was familiar, pursuant to which he had originally authorized the deductions.

CONCLUSION

In summary, respondent Southern Pacific Company contends that a Dues Deduction Agreement may provide reasonable and orderly procedures governing its operation. The essential right of the employees affected by such an agreement is to be free of *unreasonable* burdens upon the privilege of changing unions. In this case, both the Dues Deduction Agreement itself, and the facts relating to its application to individual employees such as petitioner, show that the method of revocation is reasonable, in furtherance of the purpose of avoiding disputes in accordance with the express provisions of the Railway Labor Act, and does not constitute an unreasonable burden upon petitioner's privilege of changing unions. The decisions of the trial court, and the Court of Appeals for the Ninth Circuit herein, are correct and should be affirmed.

Respectfully submitted,

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Dated: San Francisco, California,
December 24, 1958.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioner,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

RESPONDENTS' BRIEF.

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OPINIONS BELOW.

The opinion of the United States District Court, Northern District of California, Southern Division, entered on the 24th day of May, 1957, is reported at 155 F. Supp. 315, and reprinted in the record (R. 65). The opinion of the Court of Appeals affirming

the District Court is reported at 256 F. 2d 429, and reprinted in the Record (R. 85).

JURISDICTION.

The judgment of the Court of Appeals was entered on May 12, 1958. The petition for writ of certiorari was filed on August 11, 1958, and was granted on October 13, 1958. The jurisdiction of this court rests on 28 U.S.C. 1254 (1).

STATUTES INVOLVED.

Section 2, Fourth, and Eleventh of the Railway Labor Act, Title 45 U.S.C., Section 152 (Fourth and Eleventh).

STATEMENT.

Pursuant to the provisions of the Railway Labor Act, as amended (45 U.S.C. 152, Eleventh), the Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues deduction agreement (R. 74).

Petitioner is an employee of the respondent Southern Pacific Company (R. 4). He was formerly a member of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "B.R.T." (R. 6).

On February 1, 1956, petitioner and others similarly situated executed wage deduction authorizations in the form prescribed by the foregoing dues deduction agreement (R. 6, 35, 62).

This form provided:

> "This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

This conformed with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C. Section 152, Eleventh).

More than a year after the execution of their assignments, petitioner and others resigned their membership in B.R.T. (R. 17, 23, 36). At the time of their resignations, petitioner and other employees similarly situated attempted to revoke their wage assignments by a procedure other than that contained in the agreement of August 1, 1955. Neither petitioner nor any of the other employees similarly situated submitted their written revocations on forms "reproduced and furnished" by the B.R.T. (R. 25). They did not personally submit written revocations to the respondent Southern Pacific Company (R. 20). They did not notify the Southern Pacific Company that they were no longer members of the B.R.T. (R. 62).

The written forms sent to the B.R.T. were similar to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79, 80).

The District Court was of the opinion that to effectively administer a dues deduction agreement "some sort of orderly procedure" was required. Such a procedure was "no burden" on the employee and was only a "reasonable compliance" with the Railway Labor Act (R. 69).

The Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court (256 F. 2d 429, 430) (R. 87).

QUESTION INVOLVED.

Whether the requirement in the dues deduction agreement (R. 74) that authorizations by the member employee for deductions from his wages for payment of dues, assessments and insurance premium, and the revocation of such authorizations, must be on forms "reproduced and furnished" by the Brotherhood of Railroad Trainmen, was invalid as a restriction on the employee member's right to change unions or revoke his dues deduction authorization.

ARGUMENT.

NEITHER THE B.R.T. NOR THE SOUTHERN PACIFIC COMPANY, BY THE TERMS OF THE DUES DEDUCTION AGREEMENT OF AUGUST 1, 1955, IN ANY WAY RESTRICTED THE RIGHT OF THE PETITIONER AND OTHERS SIMILARLY SITUATED TO EITHER REVOKE HIS WAGE DEDUCTION AUTHORIZATION OR TO CHANGE HIS UNION, IN VIOLATION OF THE PROVISIONS OF THE RAILWAY LABOR ACT AS AMENDED.

A. The wage deduction agreement was valid under the provisions of the Railway Labor Act as amended, and petitioner was bound by its provisions.

The Railway Labor Act specifically provides for dues deduction agreements between a carrier and a labor organization duly designated to represent employees.

> "Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—
> "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other

than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Agreements in respect to dues deductions are collective bargaining agreements.

N.L.R.B. v. Reed & Prince Mfg. Co., 1 Cir., 1953, 205 F. 2d 131, 136.

Such agreements are binding upon the members of that bargaining organization (here the B.R.T.).

"Other parts of the Act expressly provide for the complete independence of employees in the matter of self-organization, and the right of employees to organize and bargain collectively through representatives of their own choosing,

and conferred upon the majority of any class of employees the right to determine who should be the representatives thereof. Section 2 (Fourth) of the Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C.A. Secs. 151a and 152, Fourth. There can be no doubt that the action of a majority of employees in the selection of representatives *and the action of the representatives themselves so selected were intended to be binding upon the whole class of employees.*"

Atlantic Coast Line R. Co. v. Pope, 119 F. 2d 39 at 43.

The petitioner was thoroughly familiar with the provisions of the dues deduction agreement, for his wage assignment was made "in the form and in the manner provided in a (the) collective bargaining agreement negotiated by the defendant Southern Pacific Company and the Brotherhood of Railroad Trainmen, a voluntary association, acting as collective bargaining agent for the plaintiff on or about August 8, 1955" (R. 11). In addition, he was furnished a copy of the agreement and it was explained to him when he first signed the authorization for dues deduction (R. 32).

B. The agreement placed no restriction on the right of petitioner to revoke his wage deduction authorization, or to change unions.

It is petitioner's contention that the requirement in the agreement in question that revocations of authorizations for dues deductions by the Southern Pacific Company, requiring such revocations to be on forms "reproduced and furnished" by the B.R.T. in-

fringed upon the rights of the petitioner as guaranteed by the Railway Labor Act (Brief of Petitioner, 4, 5). This contention is without merit.

These rights are presented as (1) petitioner's right to revoke his wage deduction assignment, and (2) his right to change unions.

The Railway Labor Act provides only that authorizations and revocations of dues deductions shall be in writing (45 U.S.C. 152, Eleventh (b)). There is nothing in the Act stating the form to be followed in each instance, or how the employer is to be notified or when, with relation to pay days. In consequence, there must be some sort of an agreement whereby the employee can be properly credited by his union for dues, etc. paid, and responsibility placed for proper notifications, so the employee can be protected.

The agreement of August 1, 1955, set up such an administrative procedure. It provided that:

(1) The Southern Pacific Company shall deduct dues, initiation fees, assessments and insurance from wages, upon the written authorization of a member (member of B.R.T.) in the form agreed upon (R. 74).

(2) Revocation shall be in the form agreed upon (R. 74, 75).

(3) Both the authorization form and the revocation form are to be reproduced and furnished by the Organization (B.R.T.) (R. 75).

(4) The Organization (B.R.T.) assumed full responsibility for the procurement and execu-

tion of the forms and for the delivery of the forms to the Southern Pacific Company (R. 75).

(5) The treasurer of the local lodge to which the employee belongs is to furnish the company with a certified list showing deductions and revocations, and this list is to be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination thereof is to become effective (R. 75).

(6) Where an employee desires to terminate his dues deduction authorization the list should so show and be accompanied by a revocation of assignment form (R. 75, 76).

Where in this procedure is there any restriction on the right of the employee to either revoke his authorization for dues deduction or his right to change unions? If there was no "orderly procedure" set up how would the employee know when to forward either his authorization or revocation to the company? If each employee acted on his own, as petitioner contends, it is obvious that only confusion would result.

The only practical way to assure the employee that his wishes will be carried out, and that he will not be injured by some spurious revocation or authorization, is to follow a regular procedure through his bargaining agent. That procedure was properly set up in the agreement (R. 74).

Requiring a revocation to be on a form "reproduced and furnished" by the B.R.T. was no more a restriction on petitioner's right to revoke his authori-

zation to deduct dues or his right to change unions than requiring that the forms be sent to the Company on or before the 5th of the month, or that they be sent through his bargaining representative. As a matter of fact, petitioner raises no objection to any of the other requirements of the agreement.

The requiring of a revocation to be on a form "reproduced and furnished" by the B.R.T. is actually a protection to the member employee.

C. Requiring the employee to submit his revocation of a wage assignment authorization on a form "reproduced and furnished" by the B.R.T. protects the rights of the member employees.

The requirement that revocation forms be "reproduced and furnished" by the B.R.T. serves a desirable purpose. If any similar printed form to that required under the agreement was acceptable, either a spurious authorization to deduct dues, or to revoke an authorization could cause loss of rights and insurance benefits. This requirement acts as a safety valve or check to prevent any such occurrence.

This requirement in no way restricts the employee member's right to either authorize a dues deduction or to revoke such an authorization; but safeguards that right against any outsider or troublemaker who might attempt to file a spurious form to create dissatisfaction or confusion.

The proper forms were readily available to the members of the B.R.T. either by personal request or by mail (R. 30). It is just as easy for the members to obtain the proper forms from the B.R.T. as it is

for them to procure the forms from an outside source. In fact, the petitioner here was forwarded the proper form by return mail in reply to his letter of resignation enclosing the spurious form. This without his asking (R. 25).

If this requirement is held invalid it will remove the lock from the door, and leave the house wide open for ransack. Sometimes, as a practical matter, an employee needs protection against himself as well as from outside undue influence, and the procedure set up in the agreement in question affords that protection by requiring both the authorization and revocation of dues deduction to be made in writing on the proper form obtainable from his own representative.

D. Dues deduction agreements are properly made between the carrier and the labor organization representing the employee.

Petitioner's argument to the effect that the carrier and union have no right to enter into an agreement setting up the administrative procedure by which a member employee can authorize or revoke dues deductions is wholly fallacious.

The Railway Labor Act specifically grants that right to the carrier and union, and avoids any right in the employee other than through his bargaining agent or representative.

> "Eleventh. Notwithstanding any other provision of this chapter * * * any carrier * * * and a labor organization duly designated and authorized to represent employees * * * shall be permitted * * *

(b) to make agreements providing for the deduction by such carrier * * * from the wages of its employees * * * and payment to the organization representing * * * the class of such employees, of any periodic dues * * *."

(45 U.S.C. 152; Eleventh (b).)

The statute thus clearly gives the right to the carrier and the labor organization to enter into an agreement concerning dues deduction, and leaves the administrative procedure to be determined by the carrier and the union in such an agreement. The statute prescribes only that the individual employee shall give his consent or revoke his consent to dues deductions in writing.

(45 U.S.C. 152, Eleventh(b).)

As is contemplated by the above statute provisions, the B.R.T. and the Southern Pacific Company entered into the agreement in question. This agreement, as pointed out above, prescribed that, "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the organization (union) without cost to the company. The organization shall assume full responsibility for the procurement and execution of the forms by employees and for delivery of such forms to the company."

These provisions merely set up a procedure by which the deduction of dues could be handled in a safe and orderly manner. Certainly it was never contemplated that the individual employee could just write an authorization or revocation on a piece of

paper and send it at any time to the employer and it would be acted upon. That is the substance of petitioner's argument, and it is wholly unrealistic and unworkable, for it would be impossible to keep accurate records if such authorizations and revocations were sent to the company at random.

There would always be disputes as to receipt of such notices by the company when they were sent, and when they were to be effective. The only reasonable conclusion is that the procedure was to be established by agreement such as the one here involved. If mistakes were made under such circumstances, it would be difficult to fix responsibility. Under the agreement the B.R.T. assumes full responsibility for obtaining and delivering written authorizations and revocations and, in assuming that responsibility, it has a right to be protected by requiring, as the agreement permitted by statute does, that a definite procedure be strictly followed.

It seems explicit in the wording of the statute that the employee is to furnish the employer with written authorization and revocation of dues deduction through the labor organization (B.R.T.) representing his class of employment, and not individually, as contended by petitioner.

If, as contended by the petitioner, the authorization and revocation of dues deductions was up to the individual employee, how would the B.R.T. know where to go to collect unpaid dues, assessments and insurance premiums, to protect the employee from the possible loss of his rights for non-payment of dues and

premiums? What would prevent an unscrupulous person from sending the company a spurious authorization or revocation of dues deduction?

The union would not be able to protect the rights of its employee members under such circumstances, for according to petitioner's argument the deduction of dues is a matter between the company and the individual employee, and the company would be under no obligation to notify the union of any change either as to authorization to deduct dues or to revoke a previous authorization.

The only reasonable interpretation of the statute in question is that it was intended to give the individual employee the right to authorize the deduction of dues, assessments, etc., from his wages or to revoke such authorization; providing, that such authorization or revocation is in writing. However, the procedure for administering the deduction of dues, etc., from the wages of the employees is not set out in the statute and is therefore a matter for agreement between the employer carrier and the labor organization representing the class of employees involved. This interpretation enables the employer to be protected, the union involved to be protected, and the employee to be protected. Any other interpretation such as that urged by the petitioner would protect no one, and would lead to constant controversy and confusion.

The point of what was said by the proposers of the amendments to the Railway Labor Act allowing dues deductions or check-off agreements between a carrier and a union, was that the carrier and union could not

make an agreement for check-off of dues blanketing in all members of the union, but that each member had a choice and could for himself determine whether or not he wanted his dues deducted from his wages. This choice was to be made in writing. The only purpose then, of the agreement was, as pointed out above, to set up an orderly administrative procedure so that the enormous amount of bookkeeping involved could be accomplished with a minimum of work, and so that records could be kept straight, responsibility fixed, and all parties thereby protected.

E. The right of the petitioner to change unions was never restricted in any manner.

By letter dated March 30, 1957, the petitioner resigned from the B.R.T. (R. 7, 23). This resignation was accepted as of the date of receipt of the letter (R. 36). Also, this letter informed the B.R.T. that he had joined the O.R.C. & B. (Order of Railroad Conductors & Brakemen). Here was a complete change of unions with no restriction or interference by the B.R.T.

Had the petitioner notified the Southern Pacific Company of this change of unions, no more dues deductions would have been made regardless of a revocation, for payment of dues deducted from an employee's wages to any other union than the one in which the employee is a member is forbidden by the Railway Labor Act.

> "* * *; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues,

initiation fees, or assessments payable to any labor organization other than that in which he holds membership."

(45 U.S.C. 152 Eleventh (c).)

There might be a question involved as to the right of the B.R.T. to retain dues paid after the resignation, but the resignation and joining of another union was accomplished without restriction. The petitioner cannot now seriously contend that his resignation or affiliation with another union was delayed or in any way interfered with, for the foregoing record clearly established an uninterference with resignation and affiliation.

It is pure fiction to state, as petitioner does, that failure to follow the prescribed procedure to revoke his dues authorization would require him to belong to two unions; because, by resignation from the B.R.T. and his becoming a member of another union, the Southern Pacific Company, as a matter of law, could no longer pay over deductions to any union but the one in which he held membership, and that was no longer the respondent B.R.T.

CONCLUSION.

The B.R.T. urges that there being no procedure set up in the Railway Labor Act for administering dues deductions that a Dues Deduction Agreement may provide a reasonable and orderly procedure to govern its operation. Both the Dues Deduction Agreement

and the facts of this case show that the method of revocation is reasonable, and protects the employee, the employer, and the union, and places no restriction on the employee's right to change unions.

Dated, Oakland, California,
December 22, 1958.

Respectfully submitted,

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